Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 1 1985

BECKY DOTY, VICKY DOTY,
DAVID PRICE and ROY PRICE,

Plaintiffs,

V.

EDDY ELIAS d/b/a EDDY'S
STEAKHOUSE,

JACK C. Saver, Cork

No. 80-C-702-BT

SECOND AMENDED JUDGMENT

Defendant.

In keeping with the Court's Order of this date, the amended judgment of July 10, 1984, is hereby amended as follows:

"In keeping with the Mandate received from the Tenth Circuit Court of Appeals on June 6, 1984, and the opinion of the Tenth Circuit rendered May 2, 1984, the Court hereby enters judgment in favor of plaintiffs, Becky Doty, Vicky Doty, David Price and Roy Price, and against defendant, Eddy Elias d/b/a Eddy's Steakhouse, for unpaid wages and an additional equal amount as liquidated damages, pursuant to 29 U.S.C. §216(b). The amounts awarded are as follows:

BECKY DOTY	\$10,282.50
VICKY DOTY	\$ 9,992.50
DAVID PRICE	\$ 6,295.20
ROY PRICE	\$ 1,305.00

As ordered by the Tenth Circuit, these amounts do not include prejudgment interest. The Court further awards attorney fees in the sum of \$12,750.00 in favor of the plaintiffs and against the defendant, as well as taxable costs, pursuant to 28 U.S.C. §1920, for litigation of this matter up to the time of appeal. The Court further awards plaintiffs the sum of \$6,802.90 as reasonable

attorney fee, costs and expenses of the appeal of this case to the Tenth Circuit. Post-judgment interest at the rate of 15% per annum is awarded in favor of the plaintiffs for the damage awards to the individual plaintiffs, trial attorney fees and costs, from the date of judgment of April 16, 1982. Post-judgment interest at the rate of 15% per annum is awarded in favor of the plaintiffs for the attorney fees, costs and expenses of appeal from June 18, 1984, the date defendant's petition for rehearing was denied by the Tenth Circuit Court of Appeals (28 U.S.C. §1961; 12 Okl.St.Ann. §727).

ENTERED this 3/2 day of January, 1985.

THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Thousand Duck

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BEVERLY J. DRIVER, formerly
BEVERLY J. PULLIAM;
PICHARD A. DRIVER;
COUNTY TREASURER, Tulsa
County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 84-C-859-B

JUDGMENT OF FORECLOSURE

of Annuary 1985. The Plaintiff appears by Layn R.

Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States

Attorney; the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, appear by Susan K. Morgan, Assistant District Attorney, Tulsa County, Oklahoma; and the Defendants, Beverly J. Driver, formerly Beverly J. Pulliam, and Pichard A. Driver, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Beverly J. Driver, formerly Beverly J. Pulliam, was served with Summons and Complaint on November 25, 1984; that the Defendant, Richard A. Driver, was served with Summons and Complaint on November 25, 1984; that the Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged

receipt of Summons and Complaint on October 26, 1984; and that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on October 29, 1984.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, has filed his Answer on November 13, 1984; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, has filed its Answer November 13, 1984; and that the Defendants, Beverly J. Driver, formerly Beverly J. Pulliam, and Richard A. Driver, have failed to answer and their default has been entered by the Clerk of this Court on December 28, 1984.

The Court further finds that this is a suit based upon a certain promissory note for foreclosure of a real estate mortgage securing said promissory note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 4, Block 6, SCOTTSDALE ADDITION, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT on September 17, 1976, Randal W. Pulliam and Beverly J. Pulliam, now Beverly J. Driver, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$23,000.00, payable in monthly installments with interest thereon at the rate of $8\frac{1}{2}$ percent per annum.

That on April 17, 1982, Beverly J. Pulliam, now Beverly J. Driver, executed and delivered to the United States of America, acting on behalf of the Farmers Home Administration a

reamortization and/or deferral agreement in the principal amount of \$22,545.24, modifying the payment schedule of the note referred to above.

That as security for the payment of the above described note, Randal W. Pulliam and Beverly J. Pulliam, now Beverly J. Driver, executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated Sept 17, 1976, covering the above-described property. Said mortgage was recorded on September 17, 1976, in Book 4231, Page 3143 in the records of Tulsa County, Oklahoma.

That on June 4, 1982, Randal W. Pulliam executed and delivered to Beverly J. Pulliam, now Beverly J. Driver, a guit claim deed conveying to her all of his interest in the subject property. This deed was recorded on August 31, 1982, in Book 4631, Page 717, in the records of Tulsa County, Oklahoma. On July 9, 1984, the United States of America, acting through the Farmers Home Administration, released Randal W. Pulliam from personal liability for his indebtedness and obligations evidenced by or incurred under the terms of the above note and mortgage.

The Court further finds that the Defendant, Beverly J. Driver, formerly Beverly J. Pulliam, made default under the terms of the aforesaid promissory note, reamortization and/or deferral agreement and mortgage by reason of her failure to make monthly installments due thereon, which default has continued and that by reason thereof the Defendant, Beverly J. Driver, formerly Beverly J. Pulliam, is indebted to the Plaintiff in the principal sum of \$22,301.37, plus accrued interest of \$541.41 as of June 1, 1984, plus interest thereafter at the rate of 8½ percent per annum or

\$5.1935 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County
Treasurer, Tulsa County, Oklahoma, has a lien on the property
which is the subject matter of this action by virtue of ad
valorem taxes for the year 1984, in the amount of \$198.00. Said
lien is superior to the interest of the Plaintiff, United States
of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, has no right, title or interest in the subject property.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against the Defendant, Beverly J. Driver, formerly Beverly J. Pulliam, in the principal amount of \$22,301.37, plus accrued interest of \$541.41 as of June 1, 1984, plus interest thereafter at the rate of 8½ percent per annum or \$5.1935 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$198.00 plus penalty and interest, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, has no right, title, or interest in the subject property.

IT IS FURTHER CRDERED, ADJUDGED, AND DECREED that upon the failure of the Defendant, Beverly J. Driver, formerly Beverly J. Pulliam, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property;

Second:

In payment of the Defendant, County Treasurer,
Tulsa County, Oklahoma, in the amount of \$198.00 ad
valorem taxes which are presently due and owing on
said real property plus penalty, interest and costs of
this action;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall deposited with the Clerk of the Court to await further Order of the Court.

IT IF FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above described real property, under and by virtue of this judgment and decree, the Defendants and all persons claiming under them since the filing of this Complaint,

be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS

United States Attorney

DETER BERNHARDT

Assistant United States Attorney

SUSAN K.) MORGAN

Assistant District Attorney

Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Tulsa County, Oklahoma

FILE L

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA JAN 3 1985

WHIRLPOOL ACCEPTANCE CORPORATION,
a Delaware corporation,

Plaintiff,

vs.

BYNUM HOME FURNISHINGS, INC.,
an Oklahoma corporation,
JOHN R. BYNUM, JOHN W. BYNUM,
and DOROTHY BYNUM,

Defendants.

JOURNAL ENTRY OF JUDGMENT

On this 30 day of January, 1985, the above captioned matter comes on for hearing. The plaintiff, Whirlpool Acceptance Corporation ("Whirlpool") appears by its attorney of record, James W. Tilly. The defendants, Bynum Home Furnishings, Inc. ("BHF") and John R. Bynum ("Bynum") appear by their attorney, Tim K. Baker. After hearing the arguments of counsel and being fully advised in the premises, the court finds as follows:

- 1. BHF and Bynum have filed an offer, pursuant to Rule 68, Fed. R. Civ. P., to allow judgment to be taken against them in the captioned matter.
- 2. The offer of judgment made by BHF and Bynum was accepted by Whirlpool.
- 3. In its Offer of Judgment, BHF and Bynum offer to allow judgment to be taken against them by Whirlpool, and request that this Court make all findings in favor of Whirlpool which are necessary to support and sustain such a judgment.

- 4. The Court finds that judgment should be entered against BHF and Bynum, jointly and severally, and in favor of Whirlpool in the captioned matter pursuant to the offer of BCC.
 - 5. The Court further finds that:
 - A. On or about September 14, 1981, Appliance Buyer's Credit Corporation ("ABCC") entered into an inventory financing agreement, security agreement and power of attorney with BHF ("the First Inventory Financing and Security Agreement"), a true and correct copy of which is attached to the Complaint herein as Exhibit "A".
 - B. Contemporaneously with the execution of the First Inventory Financing and Security Agreement and as consideration therefor, Bynum executed a written guarantee of all obligations incurred by BHF to ABCC, its successors and assigns ("the Guaranty Agreement"), a true and correct copy of which is attached to the Complaint herein as Exhibit "B".
 - C. Effective March 1, 1984, ABCC changed its name to Whirlpool Acceptance Corporation ("Whirlpool"). Whirlpool succeeded to the rights of ABCC under the First Inventory Financing and Security Agreement and the Guaranty Agreement.
 - D. On or about May 22, 1984, BHF and Whirlpool executed an Inventory Financing and Security Agreement ("the Second Inventory Financing and Security Agreement"), a true and correct copy of which is attached to and made part of the Complaint herein as Exhibit "C".

- E. On or about October 16, 1984, BHF made and delivered to Whirlpool its check no. 1847 in the sum of \$35,185.20 drawn upon the Oklahoma State Bank and Trust Company of Vinita, Oklahoma ("the Bad Check"), a true and correct copy of which is attached to and made part of the Complaint herein as Exhibit "G".
- F. Whirlpool deposited the Bad Check in its account for collection, but the Bad Check was returned unpaid by reason of insufficient funds.
- G. In addition to the amount of the Bad Check, BHF and Bynum are indebted to Whirlpool for other amounts due and payable under the First and Second Inventory Financing and Security Agreements. The total amount of indebtedness from BHF and Bynum to Whirlpool, including the amount of the Bad Check, but exclusive of costs, interest, and attorneys fees, is \$39,084.46.
- H. Whirlpool is entitled to judgment against BHF and Bynum, jointly and severally, in the principal sum of \$39,084.46.
- I. Whirlpool is entitled to judgment against BHF and Bynum, jointly and severally, for attorneys fees in the sum of \$1,000 and for court costs in the sum of \$210.
- J. Whirlpool is entitled to recover interest on the amounts set forth in the two preceding paragraphs at the rate of 9.0% per annum from the date of judgment until paid in full.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff, Whirlpool Acceptance Corporation have and is hereby granted judgment against the defendants, Bynum Home Furnishings, Inc. and John R. Bynum, jointly and severally, in the principal sum of \$39,084.46, in addition to an attorney's fee of \$1,000 and court costs in the sum of \$210, such amounts to bear interest at the rate of 9.08% per annum from the date of judgment until paid in full.

St. James O. Elibon United States district judge

APPROVED AS TO FORM & CONTENT:
ROSENSTEIN, FIST & RINGOLD

James W. Tilly

Attornays for Whirlpool Acceptance Corporation

BAKER & WILLIS

Tim K Baker

Attorneys for Bynum Home Furnishings and John R. Bynum

- Enteled

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FRANCIS M. JAMES,)	FILED
Plaintiff,) } }	JAN 31 1985
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,)	Jack C. Silver, Cleak U. S. District Courses
Defendant.)	CIVIL ACTION NO. 84-C-782-E

ORDER

For good cause shown, pursuant to 42 U.S.C. §405(g), this cause is remanded for further administrative action.

Dated this 30 day of January, 1985.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

HOLD OIL corporati	CORP., a Florida ion,)					٠
	Plaintiff,)					
vs.		Ś	No. 84-C	-419-E			
COMPANY,	LOUISIANA GAS a Delaware))			j J		لسنا
corporati	Defendant.))				1985	
				_	 Y COLL	O	وأحدا

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

Jack C. Silver, Clerk U. S. DISTRICT COURT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this $3/\frac{57}{}$ day of January, 1985.

JAMES . ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITEL STATES DISTRICT COURT WITH... AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

RACHEL LAYTON, individually and as mother and next friend of MICHAEL LAYTON and JESSE LAYTON, minors,

31 1985

Jack C. Silver, Clerk U. S. DISTRICT COURT

Plaintiff,

No. 83-C-583-E

vs. MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation,

Defendant.

ORDER OF DISMISSAL WITH PREJUDICE

This cause came on before me, the undersigned United States District Judge, upon the Stipulation of the parties hereto for dismissal with prejudice. Upon reviewing the said Stipulation, and being fully advised in the premises,

IT IS ORDERED, ADJUDGED AND DECREED that the above captioned case be, and thereby is, dismissed with prejudice as to the refiling thereof.

Dated this 3/st day of January, 1985.

S/ JAMES O. ELLISON

JAMES O. ELLISON United States District Judge

APPROVED:

James B

Frasier & Frasier

/1700 Southwest Blvd., Ste. 100

74101 Tulsø, Oklahoma

918/1587-4724

Attorney for Plaintiff

Joe M. Fears

Marsh & Armstrong

406 South Boulder, Suite 600

Tulsa, Oklahoma 74103

918/587-0141

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

THOMAS SCHAEFER and

JAMES P. KEETER, individuals

Plaintiffs,

Vs.

GEORGE A. SHIPMAN and
CLARA SHIPMAN, husband and wife,

Defendants.

JOURNAL ENTRY

NOW, on this 21st day of November, 1984, there comes before this Court for trial by jury the above captioned matter. The plaintiffs apppearing, both in person and through their attorney of record, and the defendants appearing, both in person and through their attorney of record, the parties announced ready for trial. A jury of six persons was thereupon selected, and such jury was impaneled and sworn. After hearing the evidence and argument of counsel, and the instructions of the Court, the jury retired to consider their verdict, and subsequently returned into Court, and upon being called, answered and said they found a verdict resolving the issue in favor the plaintiffs and against the defendants.

WHEREFORE, by virtue of the law and the verdict of the jury, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1) That the plaintiffs shall receive Judgment on the verdict of the jury in the total amount of Four Hundred Eleven Thousand Seven Hundred Twenty-Six Dollars and Seventy-Six Cents (\$411,726.76), upon which there shall be calculated interest at the rate of 6% per annum from the 4th day of March, 1984, to the 21st day of November, 1984,

and at the rate of 9.09% per annum from the 21st day of November, 1984, to the date on which said Judgment is paid in full,

- 2) That specific performance of the Contract set forth as Exhibit A to the Complaint be and the same is hereby granted the plaintiffs, as follows:
- a) The defendants shall receive as good of a title to the subject realty, described in the said Contract, as was conveyed by the defendants to the plaintiffs. Plaintiffs shall tender to the defendants certified abstracts to the property certified to within 30 days of the date of the verdict of the jury, to-wit: November 21, 1984.
- b) The defendants shall have until the 25th of January, 1985 at 4:30 P.M. to review the abstracts and to submit any requirements of title to the attorney for plaintiffs. Failure of defendant to submit such opinion and requirements, if any, to the plantiffs' counsel on or before said date and time shall be deemed as acceptance of title.
- c) On the 30th day of January, 1985, by 4:30 P.M., the defendants are ordered to deposit in the registry of this Court, the sum of Four Hundred Thirty-Six Thousand Six Hundred Sixty-Nine Dollars and Sixty-One Cents (\$436,669.61), representing the total amount of principal and interest due on this judgment to that date. The parties shall agree upon the deposit of said money in an insured interest bearing account, by the Court Clerk.
- d) Upon notification by the Clerk that said monies have been deposited by defendants, the plaintiffs shall then or within seven (7) days thereafter tender to the defendants through the Clerk of this Court, a Release of Mortgage from Pioneer Savings and Trust Company releasing that certain second Real Estate Mortgage dated the 15th day of March, 1982, and filed at Book 4605, Page 1841 of the

Tulsa County records and a General Warranty Deed to the subject realty described at Exhibit A hereto. The said Warranty deed shall recite that the property conveyed thereunder shall remain subject to a certain first real estate mortgage in favor of John Buford Harrison (one and the same as John B. Harrison) individually; and Wanda M. Harrison, his wife, dated August 29, 1979, filed at Book 4423, Page 1441.

- e) Upon receipt of those documents set forth in paragraph (d) hereof, the Court Clerk is ordered to tender payment to the plaintiffs from those amounts deposited therewith in accordance with this Order and Judgment, the total sum of Four Hundred Thirty-Six Thousand Six Hundred Sixty-Nine Dollars and Sixty-One Cents (\$436,669.61). To the Defendant, the Clerk is ordered to tender the subject Release of Mortgage and General Warranty Deed, along with the balance remaining in the interest bearing account, resulting from the payment of interest on monies deposited, if any.
- 3) In the event the defendants fail or refuse to pay the amounts ordered to be paid in accordance herewith as provided in sub-paragraph 2(c), interest shall continue to run on the total judgment herein from the 30th of January, 1985 at the post-judgment rate prescribed in paragraph 1 hereof until the judgment is paid in full.
- 4) The Journal Entry of Judgment herein shall be deemed to have been settled as of January 28, 1985, and any time for appeal shall run therefrom.

JNITED STATES DISTRICT COURT JUDGE

APPROVED:

ATTORNEY FOR PLAINTIFFS

FREESE & MARCH, PA

JOHN M. FREESE, SR. ATTORNEYS FOR DEFENDANTS

1900x4600 page 2063

The East Half of the Porthunst Quarter (E/2 NW/4) of Section 12, Township 19 Horth, Range 14 East;

The Southeast Quarter of the Southeast Quarter of the Southwest Quarter (82/4 32/4 59/4) of Section 12. Township 19 North, Range 14 Bast;

Lots Two (2), Three (3), Four (4), Five (5) and Six (6), of Block Three (3); LYBE LABE DRIVE ADDITION to the City of Tulsa;

Lots Seven (7), Bight (8), Dins (9), Ten (10), Eleven (11), and Twelve (12), Block Cns (1), Lynn Lane Drive Sub, a subdivision of Tracts 1, 2, 3 and 5, Block 1, LYNN LANE DRIVE ADDITION to the City of Tulsa;

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), and Ten (10), Block Five (5), Lynn Lane Drive Sub, a subdivision of Tracts 1, 2, 3 and 5, Block 1, LYNN LANE DRIVE ADDITION to the City of Tulsa;

Lote One (1), Two (2), Three (3), Four (4), Five (5) and Six (6), Block One (1), Lynn Lane Drive Sub, a subdivision of Tracts 1, 2, 3 and 5, Block 1, LYNN LANE DRIVE ADDITION to the City of Tulsa;

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11) and Twelve (12), Block Six (6), Lynn Lane Drive Sub, a subdivisior of Tracts 1, 2, 3 and 5, Block 1, LYNN LANE DRIVE ADDITION, to the City of Tulsa;

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), and Eleven (11), in Block Two (2), Lynn Lane Drive Sub, a subdivision of Tracts 1, 2, 3 and 5, Block 1, LYNN LANE DRIVE ADDITION to the City of Tulsa;

Lots One (1), Two (2), Three (3), Four (4), Figh (5), Six (6), Seven (7) and Eight (8), in Block Three (3). Ly: Lane Drive Sub, a subdivision of Tracts 1, 2, 3 and 5, Block 1, LYNN LANE DRIVE ADDITION to the City of Tulsa;

All of Block Seven (7), Lynn Lane Drive Sub, a subdivision of Tracts 1, 2, 3 and 5, Block 1, LYNN LANE DRIVE ADDITION to the City of Tulsa;

Lots Four (4) and Six (6), of Block One (1), LYNN LANE DRIVE ADDITION to the City of Tulsa;

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11) and Twelve (12), of Block Three (3) of INDIAN HILLS, according to the recorded plat thereof filed February 1, 1928, in the office of the County Clerk of Tulsa County, Oklahoma, being a subdivision of the SE/4 of the SE/4 and the S/2 of the NE/4 of the SE/4 of Section 1, Township 19 North, Range 14 East.

LESS AND EXCEPT minerals previously reserved or conveyed of record; and

SUBJECT TO easements, and to restrictions of record;

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JONATHAN WHISNANT, a minor by and through his mother and	AN 3 1 1985;
next friend, Mary Alice Whisnant, and MARY ALICE WHISNANT, Individually,	Jack C. Silver, Clerk U. S. DISTRICT COURT
Plaintiffs,	
vs.	No. 83-C-383-E
AFFILIATED FOOD STORES, INC.,	<u> </u>
Nefendant.) }

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this 3/57 day of January, 1985.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CRI DE MIL

GEORGE WILLIAM PASLEY,	YUS LITT COURT
Plaintiff,	(j.5), biolisses
vs.) Case No. 84-C-453-C
R. W. GOEN, M.D., CHARLES H. NASH, III, M.D., and MEDICAL ASSOCIATES OF TULSA, INC., now known as EASTERN OKLAHOMA)))
HEMATOLOGY-ONCOLOGY, INC., Defendants.)))

ORDER OF DISMISSAL

On this 30 day of January, 1985, the above matter comes on for hearing upon the written Application to Dismiss Without Prejudice of the Plaintiff herein. The Court having examined said Application, and being fully advised in the premises, finds that said cause of action should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the above-entitled cause of action be and the same is hereby dismissed without prejudice.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

ACK C.SILVER, CLERK

Plaintiff.

vs.

DAVID H. DOSCH,

Defendant.

CIVIL ACTION NO. 85-C-32-E

NOTICE OF DISMISSAL

COMES NOW the United States of America by

Layn R. Phillips, United States Attorney for the Northern

District of Oklahoma, Plaintiff herein, through Peter Bernhardt,

Assistant United States Attorney, and hereby gives notice of its

dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure,

of this action without prejudice.

Dated this 30 day of January, 1985.

UNITED STATES OF AMERICA

LAYN R. PHYLLIPS United States Atto

PETER BERNHARDT

Assistant United States Attorney

460 U.S. Courthouse Tulsa, Oklahoma 74103

(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 39 day of January, 1985, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: David H. Dosch, 713 North Richmond, Tulsa, Oklahoma 74115.

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STANLEY J. SPARA	.,) .)	JACK C. SILVER CLERK
-vs-	Appellant,)) No.	84-C-789-C
SHARON SPARA,) }	
	Appellee.	Ś	

AGREEMENT FOR DISMISSAL OF APPEAL

Pursuant to the provisions of Rule 8001 of the Rules of Bankruptcy, the undersigned, who are all parties to the above-entitled appeal, herein stipulate and agree that this appeal shall be dismissed.

Dated / 72385 , 1985.	
-----------------------	--

STANLEY J. SPARA, Appellant

SHARON SPARA, Appellee

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

(918) 581-7796 (FTS) 736-7796

TULSA, OKLAHOMA 74103

January 30, 1985

Mr. Chico Conchitia General Delivery Tulsa, OK 74101

JACK C. SILVER

CLERK

RE: 84-C-831-C; CHICO CONCHITIA

vs

SALVATION ARMY & MABEE CENTER

Dear Mr. Conchitia:

Please be advised that on this date Judge H. Dale Cook entered the following Minute Order in the above styled case:

"It is ordered that action is dismissed without prejudice for Plaintiffs failure to respond to Defendant's motion to dismiss as ordered by the Court on 12/18/84."

If you have any questions, please contact our office.

Very truly yours,

JACK C. SILVER, CLERK

By:

A. Muncrief, Deputy Clerk

cc: Mr. Gary W. Wood

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

RAYMOND BRADLEY HUDELSON,
Plaintiff,

vs.

LUXURY AUTO SALES, INC.,

Defendant.

NO. 84-C-266-B

ORDER

Pursuant to the Application for Dismissal filed herein by the plaintiff, Raymond Bradley Hudelson, the Court finds that said Application should be allowed and hereby dismisses the above entitled cause with prejudice to his right of filing any further action against the defendant, Luxury Auto Sales, Inc., all issues of law and fact having been fully compromised and settled.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE

JAN 29 1135

UNITED STATES OF AMERICA,

Plaintiff,

To the second court

vs.

Articles of food consisting of the following:

463/200-tablet bottles, more or) less, coded "5238" or "5239",) labeled in part:

(bottle)

"EARTHPISE SPIRULINA Grown in) the United States ***)
Manufactured by: The Earthrise)
Company, P.O. Box 1196, San)
Rafael, CA 94915. *** 200)
TABLETS Net Wt. 100 gm ***")

283/100-tablet bottles, more or) less, coded "5236", labeled in) part:

(bottle)

"EARTHRISE SPIRULINA Grown in) the United States ***)
Manufactured by: The Earthrise)
Company, P.O. Box 1196, San)
Rafael, CA 94915. *** 100)
TABLETS Net Wt. 50",

Defendants.

CIVIL ACTION NO. 84-C-887-E

MOTION FOR DEFAULT DECREE OF CONDEMNATION AND DESTRUCTION

Comes now the United States of America by Layn R.

Phillips, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney, and pursuant to Rule 55 of the Federal Rules of Civil

Procedure and 21 U.S.C. §334, moves this Court for a Default Decree of Condemnation and Destruction, and in support thereof, it is represented:

- (1) That this action was instituted by a Complaint for Forfeiture filed November 2, 1984.
- (2) The Complaint alleges that the articles proceeded against are foods which are adulterated and misbranded while held for sale after shipment in interstate commerce, within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §301 et seq., as follows:
- (a) §342(a)(3) in that the articles consist in whole or in part of a filthy substance because they contain insect fragments.
- (b) \$343(a)(1) in that the articles' labeling is false and misleading.
- (3) That pursuant to the Warrant for Arrest of Property issued by this Court, the United States Marshal, within the jurisdiction of this Court, seized the articles which are the subject of this action.
- (4) That Notice of the arrest and seizure of said articles was published pursuant to law.
- (5) That since the filing of the Complaint, the seizure of the articles and publication, no person has intervened as claimant as required by Supplemental Rule C(6).

WHEREFORE, the United States moves this Honorable Court pursuant to Rule 55, Federal Rules of Civil Procedure and 21 U.S.C. §334, to enter an Order adjudging all persons having any

right, title or interest in the articles seized in this action to be in default, adjudging the articles seized in this action adulterated and misbranded as alleged in the Complaint, and ordering the condemnation and destruction of the articles seized in this action.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS UNITED STATES ATTORNEY

NANCY/NESBITT BLEVINS

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

THE BOARD OF TRUSTEES OF THE PLUMBERS & PIPEFITTERS NATIONAL PENSION FUND, et al.,)))
Plaintiffs,) }
vs.	No. 84-C-270-C
DICK MORROW, d/b/a D.M. COMPANY,	} }
Defendant.	og di ad vo, Cla li og advo, Clali

JOURNAL ENTRY OF JUDGMENT

This matter came on for trial on this A day of January, 1985. The Court finds that Kenneth L. Wire, attorney for the plaintiffs, and Ernest B. Day, Jr., attorney for the defendant, have entered into a stipulation of facts. This stipulation is attached to this judgment and made a part thereof as if set out in full.

The Court finds that, based on the stipulation, judgment should be entered for the plaintiffs in the sum of \$81,383.13 for benefits due, \$2,415.37 for interest, and \$3,895.00 for attorney fee, for a total of \$87,693.50.

The Court further finds that the parties have agreed to a payment schedule which is set out in detail in the stipulation and which should be made part of the judgment. Under this schedule, the plaintiffs will receive \$49,787.13 upon entry of this judgment, \$25,352.52 within 30 days, and \$12,553.85 within 60 days.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered for the plaintiffs, the Board of Trustees of the

Plumbers and Pipe Fitters National Pension Fund, the Board of Trustees of Plumbers and Pipe Fitters Local 205 Apprenticeship Fund, the Board of Trustees of the Plumbers and Pipe Fitters Local 205 Annuity Fund, and the Board of Trustees of the Plumbers and Pipe Fitters Local 205 Vacation Fund in the sum of \$87,693.50.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as long as payment is made according to the schedule set forth in the stipulation, no execution will issue and interest on the judgment will be waived.

(Signed) H. Dale Cook

Approved as to form and content:

Kenneth L. Wire

Attorney for Plaintiffs

Ernest B. Day, Jr.
Attorney for Defendant

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA JAN 29 1985

THE BOARD OF TRUSTEES OF THE PIPELINE INDUSTRY BENEFIT FUND,	Jack C. Silver, Clerk) Q. S. DISTRICT CONTACT)
Plaintiff,	
vs.	No. 85-C-26-E
BAR SAN CONTRACTORS, INC.,)
Defendant.)

ORDER OF DISMISSAL

Now on this get day of January, 1985, plaintiff's Motion to Dismiss coming on for consideration and counsel for plaintiff herein representing and stating that all issues, controversies, debts and liabilities between the parties have been paid, settled and compromised;

IT IS THE ORDER OF THIS COURT that said action be, and the same is, hereby dismissed with prejudice to the bringing of another or future action by the plaintiff herein.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE A LED NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	JAN 29 1985
Plaintiff,	JOHN C. Silver, Clerk G. S. DISTRICT COURT
vs.	j
LYNDA WEBB,	
Defendant.) CIVIL ACTION NO. 84-C-855-C

JUDGMENT OF FORECLOSURE

of January, 1985. The Plaintiff appears by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Lynda Webb, appears not, but makes default.

The Court being fully advised and having examined the file herein finds that Defendant, Lynda Webb, was served with Summons and Complaint on October 25, 1984.

It appears that the Defendant, Lynda Webb, has failed to answer and her default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain promissory note and for foreclosure of a real estate mortgage securing said promissory note upon the following described real property located within the Northern Judicial District of Oklahoma:

Lot One Hundred Twenty-Four (124), Block "M", VERN HEIGHTS SUBDIVISION, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT on June 17, 1983, Lynda Webb executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, her promissory note in the amount of \$27,000.00, payable in monthly installments with interest thereon at the rate of 11 percent per annum.

That as security for the payment of the above-described note, Lynda Webb executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a real estate mortgage dated June 17, 1983, covering the above-described property. Said mortgage was recorded in Book 4699, Page 1745, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendant, Lynda Webb, made default under the terms of the aforesaid promissory note and mortgage by reason of her failure to make monthly installments due thereon, which default has continued and that by reason thereof the Defendant, Lynda Webb, is indebted to the Plaintiff in the sum of \$27,245.04 as of November 1, 1983, plus interest thereafter at the rate of 11½ percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendant, Lynda Webb, in the sum of \$27,245.04 as of November 1, 1983, plus interest thereafter at the rate of 11½ percent per annum until judgment, plus interest thereafter at the current legal rate of

9.09 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Lynda Webb, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above described real property, under and by virtue of this judgment and decree, the Defendant and all persons claiming under her since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title,

interest or claim in or to the subject real property or any part thereof.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS United States Attorney

NANCY MESBITT BLEVINS

Assistant United States Attorney

JONATHON WHISNANT, a minor, by and through his mother and next friend, MARY ALICE WHISNANT,)))	JAN 2 9 1965
and MARY ALICE WHISNANT, individually,)))	Jack G. Silver, Clerk U. S. DISTRICT COURT
Plaintiffs,)	
vs.) No. 83-C-383-E	
AFFILIATED FOOD STORES, INC., an Oklahoma corporation,)))	
Defendants.	j	

MOTION FOR LEAVE TO SETTLE CLAIM OF MINOR PLAINTIFF AND FOR LEAVE TO ENTER ORDER OF DISMISSAL WITH PREJUDICE OF ALL CLAIMS

AND

ORDER APPROVING SETTLEMENT AND ORDER OF DISMISSAL WITH PREJUDICE

Your Petitioner, Mary Alice Whisnant, now Stephens, is the natural mother of Jonathon Whisnant, a minor, and does request of this Court its approval of a settlement of any and all claims which exist or may exist on behalf of this Petitioner and said minor child, which arise from or may arise from the accident complained of in Petitioner's Complaint on file herein. That as the mother of Jonathon Whisnant, she has had continuous possession of said minor child, has incurred all expenses of whatever nature in his care and treatment at all times since his birth, and does represent to the Court that she has been made fully aware of all legal rights and ramifications which she has individually or on behalf of said minor child concerning recovery of any damages sustained by her or said minor child as a result of the accident complained of in the Complaint filed herein. That this Petitioner attaches her Affidavit in this respect, and affirms to this Court that it is in the best interest of said minor child,

€. • to allow settlement of all of said claims, and requests of this Court after consideration of this Petitioner's Affidavit, an Order of this Court dismissing with prejudice any andall claims of whatever nature, existing or which may exist in the future, which this Petitioner and her minor child may have as a result of the accident complained of herein.

Respectfully submitted,

FRASIER, FRASIER & GULLEKSON

James E. Frasier

P. O. Box 799

Tulsa, Oklahoma 74101

(918) 584-4724

I hereby certify that a true and correct copy of the above and foregoing was mailed to the following attorney(s) of record, with sufficient postage thereon, on this day of January, 1985.

Mr. Richard D. Wagner Attorney at Law 233 West 11th Street Tulsa, OK 74119

James E. Frasier

ORDER APPROVING SETTLEMENT AND ORDER OF DISMISSAL WITH PREJUDICE

Now on this _____ day of January, 1985, this Court has considered the Motion of Plaintiff as filed herein, seeking approval of this Court of the settlement of all claims, and entry of Order dismissing with prejudice the pending action, this Court

surfered the more pour of one may be for any processions to The surfered the More is true has certified a minute recommending the settlement be Cartier has continued of the settlement of the Parties recommendations

finds that said settlement is reasonable and proper under the circumstances existing and is to the best interest of said minor Plaintiff under the circumstances existing, and does hereby approve said settlement and Order that this action be dismissed with prejudice to any future filing of any claims by or on behalf of either Plaintiff herein, or other person claiming through them, as a result of the accident set forth in the Complaint herein, and this action is hereby Dismissed with Prejudice at the cost of the Plaintiff.

JAMES 6. ELLISON,

UNITED STATES DISTRICT COURT JUDGE FOR THE

NORTHERN DISTRICT OF OKLAHOMA

Dated this 2971 day of January, 1985.

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

- UMM 20 - 1015 Digitalist / Shebk

OBO, et al.,)
Plaintiffs,	,
vs.) No. 83-C-246-E
CITY OF TULSA, TULSA F.O.P. LODGE NO. 93, et al.,)
Defendants.)

CONSENT DECREE

Roy C. Johnson, an individual, filed this action as one of several Plaintiffs against the City of Tulsa, several officials thereof, and, inter alia, the Tulsa Fraternal Order of Police Lodge No. 93 and the officers and directors thereof individually.

The Complaint in this matter alleges <u>inter alia</u> that the F.O.P. Lodge and its representatives have conspired with the City of Tulsa and its representatives to discriminate against black citizens in hiring, promotions, working conditions, union representation, and other aspects of the administration and operation of the Tulsa Police Department.

Plaintiff Johnson and the other Plaintiffs in this action allege that the Defendants violated the Constitutional rights of the Plaintiffs on account of the Plaintiffs' race, all in violation of 42 U.S.C. §§ 1981, 1983, 1985(3), and 1988, as well as Title VII of the 1964 Civil Rights Act as amended, 42 U.S.C. § 2000(C), and Oklahoma Statutes: 12 O.S. §§ 303 and

1442, 25 O.S. §§ 1601, 1603, and 1605, and 76 O.S. §§ 6 and 7. Plaintiffs allege that the Defendants, in so doing, deprived the Plaintiffs of the civil rights secured for them by the First, Fifth, Thirteenth, and Fourteenth Amendments to the United States Constitution.

Each Defendant in this matter has denied all allegations by the Plaintiffs, has denied any violation of the aforesaid laws and Constitution, and has denied any racial discrimination whatsoever against any of the Plaintiffs. The F.O.P. Lodge and its representatives deny that there has been any conspiracy against the Plaintiffs and, in particular, deny that there has been any conspiracy or action to deny the rights of Plaintiff Roy C. Johnson. The F.O.P. Lodge and its representatives further deny that any Lodge officer, director, or member, has discriminated against, or attempted to deprive, Plaintiff Roy C. Johnson of any rights or benefits in connection with fair and equal employment and treatment. Further, the F.O.P. Lodge and its representatives specifically deny any breach of their duty to represent Roy Johnson or other black citizens fairly and equally. The F.O.P. Lodge and its representatives assert and maintain that they have acted as bargaining agent and fraternal organization without any racial discrimination or other arbitrary treatment, and have represented and pursued the interests of Tulsa police officers fairly and vigorously.

The F.O.P. Lodge, however, is desirous of avoiding the joinder, expense, and uncertainty of further contested

litigation concerning Plaintiff Roy C. Johnson. Further, the F.O.P. Lodge is desirous of eliminating any disadvantages or discrimination which may have been encountered by Plaintiff Roy C. Johnson in his employment with the Tulsa Police Department, and also desire that he should enjoy all benefits of fair and equal treatment under the law while so employed.

The Tulsa Fraternal Order of Police Lodge No. 93, therefore, hereby agrees and consents to the entry of this Decree. The parties signatory hereto, by agreeing and consenting to the entry of this Decree, stipulate to the jurisdiction of the Court over the respective parties and acknowledge the Court has jurisdiction over the subject matter of this action, and waive a hearing and the entry of findings of facts and conclusions of law on all issues involved herein as they affect the rights of the parties signatory hereto.

However, this Decree shall constitute neither an admission by the parties signatory hereto nor an adjudication by the Court on the merits, if any, of the allegations of Plaintiff Roy C. Johnson.

This agreement is entered into as a settlement of an existing dispute between the Plaintiff Roy C. Johnson and the Defendant Tulsa Fraternal Order of Police Lodge 93.

This Consent Decree satisfies and finally resolves all claims, actual or potential, of Plaintiff Roy C. Johnson with respect to all allegations of racial discrimination and/or union representation set forth or referred to in his Complaint.

Plaintiff Roy C. Johnson shall seek no further relief for the acts, practices, or omissions alleged or referred to in the Complaint, save to enforce the provisions of this Decree, thereby waiving forever the right to seek any further relief, whether legal or equitable, as to the Defendant Tulsa Fraternal Order of Police Lodge No. 93. Plaintiff Roy C. Johnson understands and agrees that this Consent Decree is fully binding individually upon him and upon his heirs, successors, assigns, executors, etc. Defendant Tulsa Fraternal Order of Police Lodge No. 93 agrees that this Consent Decree is fully binding on its successor organizations, if any.

The parties further aver that action to enforce this Decree may be properly maintained by Plaintiff Roy C. Johnson.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The major purpose of this Decree is to insure Plaintiff Roy C. Johnson is afforded fair representation and equal treatment with all Tulsa police officers by his exclusive bargaining agent, the Defendant Tulsa Fraternal Order of Police Lodge No. 93. That said Defendant affirms and shall seek in good faith to afford Plaintiff Roy C. Johnson fair and equal treatment in his employment and will instruct Lodge membership on affirmative action and equal opportunities. That said Defendant will strive to discourage discriminatory practices, if any, by Lodge members, or by any other persons wearing the uniform of a Tulsa police officer within the Lodge's legal powers.

- 2. Said Defendant agrees to make known its policies and practices of non-discrimination periodically.
- 3. Said Defendant agrees to encourage the recruitment, hiring, training, and fair promotional consideration of qualified black officers.
- 4. Said Defendant agrees to afford and encourage membership by blacks in the Fraternal Order of Police Lodge No. 93, and further, said Defendant shall not retaliate or discriminate against any person or officer who opposes racially discriminatory policies or practices because of that person's participation in or cooperation with the initiation, investigation, or litigation of any charge of discrimination based on race or the administration of this Decree.
- 5. The Defendant Fraternal Order of Police Lodge No. 92 hereby agrees and consents to pay Plaintiff Roy C. Johnson a certain sum of money, which has been paid in full to him. The exact amount so paid has been orally disclosed to the Court, but shall not be set forth herein.
- 6. The Tulsa Fraternal Order of Police Lodge No. 93 acknowledges that the City of Tulsa has engaged in, and continues to engage in, racially discriminatory practices and policies within its police department, and further has taken, and continues to take, certain actions which have an unfairly disparate impact upon minority police officers. The Tulsa F.O.P. hereby agrees and consents to encourage full investigation of all complaints by black police officers concerning racial discrimination by the City of Tulsa, and

further agrees and consents to make attempts in collective bargaining to rectify such discrimination by the City, provided that such attempts are within the legal power of the Lodge, and taking into account the limited financial resources of the Lodge.

The Court hereby gives its tentative approval to this Consent Decree, subject to the notification of all parties Plaintiff and Defendant and the provision of an opportunity for them to file objections. This notice shall be mailed to each identified party Plaintiff and Defendant by certified mail, return receipt requested. Costs will be borne by Defendant Fraternal Order of Police Lodge No. 93. Plaintiffs and Defendants who file written objections shall be entitled to be heard at a hearing before this Court. If no written objections are filed within thirty (30) days of mailing, this Consent Decree shall become final without further action by this Court.

United States District Court Judge

Johnson

APPROVED:

Order of Police, Lodge No.

-6-

PINOCCHIO'S CHILD CARE
CENTER, INC., Debtor in
possession d/b/a RICHMOND
ACADEMY,

Plaintiff,

Plaintiff,

No. 84-C-801-C

Defendants.

STIPULATION OF DISMISSAL

COMES NOW all parties in the above-referenced action and hereby agree to dismiss the above cause with prejudice, all matters having been settled.

Consent as to form and content:

Attorney for Plaintiff

Attorney for Defendant

Enteled

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 2 8 1985

Jack C. Silver, Clerk U. S. DISTRICT COURT

NATIONAL INSURANCE SERVICES, INC., a corporation, and CHARLES S. KOPP,

Plaintiffs,

vs.

.

AMERICAN INTERNATIONAL GROUP, et al.,

Defendants.

JUDGMENT

This action came on for hearing upon motion of Defendant to amend judgment before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED AND ADJUDGED that the Judgment of this Court be amended to reflect the following disposition of Defendant's counterclaim:

IT IS ORDERED AND ADJUDGED that the Defendants recover judgment of the Plaintiffs on the counterclaim in the amount of \$9,405.36, and that Defendants be awarded costs of action.

DATED this 2574 day of January, 1985.

AMES . ELLISON

UNITED STATES DISTRICT JUDGE

No. 82-C-1213-E

Externed

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 2 8 1965

Jack C. Silver, Gierk

U. S. DISTRICT COURT

MARCELLA MORGAN,

Plaintiff.

vs.

No. 82-C-960-E

MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,

Defendant.

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed on January 8, 1985 which it is recommended that this case be remanded to the Secretary for further administrative proceedings. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the matters presented to it, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is hereby Ordered that this case be remanded to the Secretary for further proceedings consonant with the Findings and Recommendations of the Magistrate.

Dated this 25 day of January, 1985.

JAMES OF ELLISON

Enteled

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 2 8 1985

SUE A. CHEATHAM,)	Jack C. Saver, wein
Plaintiff,)	U. S. DISTRICT 633
vs.))	No. 83-C-805-E
MARGARET M. HECKLER, Secretary of Health and)	V

ORDER

Human Services,

Defendant.

NOW on this <u>1814</u> day of January, 1985 comes on for hearing Defendant's objections to the Findings and Recommendations of the Magistrate in the above-styled case and the Court, being fully advised of the premises finds the same should be overruled.

The Court has reviewed the file and the legal arguments propounded and agrees with the recommendation of the Magistrate specifically as to the application of the Tenth Circuit opinion in Allison v. Heckler, 711 F.2d 145 (1983).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant's objections to the Findings and Recommendations of the Magistrate be and are hereby overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Findings and Recommendations of the Magistrate be and are hereby adopted by this Court. Accordingly, this case is ordered remanded to the Secretary of Health and Human Services for further proceedings in order to allow Plaintiff to offer evidence either by way of cross examination of Dr. Robert T. Rounsaville,

M

M.D. or by offering rebuttal evidence, or both.

JAMES O. ELLISON UNITED STATES DISTRICT JUDGE

JAN 2 8 1985

TOTAL PETROLEUM, INC., a Michigan corporation,

Plaintiff,

Jack C. Silver, Clerk U. S. DISTRICT COURT

No. 84-C-39-E

B & B TRADING COMPANY, an Oklahoma corporation,

Defendant and Third Party Plaintiff,

v.

vs.

TRACO PETROLEUM COMPANY,

Third Party Defendant.

ORDER

On the foregoing Stipulation of Dismissal With Prejudice of the parties herein, Plaintiff, Total Petroleum, Inc., by its attorneys of record, Defendant/Third Party Plaintiff, B & B Trading Company, by its attorneys of record, and Traco Petroleum Company, by its attorneys of record,

IT IS HEREBY ORDERED that the above entitled action of Plaintiff be and it hereby is dismissed with prejudice to all parties, and that the Third Party Complaint of B & B Trading Company be, and it is hereby dismissed with prejudice to all parties.

ORDERED this 18 day of January, 1985.

JAMES O. ELLISON

Enteled

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

28 1985

Jack C. Silver, Jork. CHARTER OIL COMPANY, U. S. DISTRICT COMPR a Florida corporation, Plaintiff. vs. No. 83-C-26-E ALLENE A. RIFFE, individually and as Executrix of the Estate of Lavern Edgar Riffe, Deceased, Defendant. ALLENE A. RIFFE, individually and as Executrix of the Estate of Lavern Edgar Riffe, Deceased, Plaintiff, vs. No. 84-C-402-E RIFFE PETROLEUM COMPANY, an Illinois corporation, Defendant.

DISMISSAL WITH PREJUDICE

Pursuant to the stipulations contained in the November 30, 1984 Settlement Agreement containing six pages between the parties hereto, all claims made in the subject suits by Charter Oil Company, Riffe Petroleum Company, Allene A. Riffe, individually,

REPERVED AS 15

and Allene A. Riffe as Executrix of the Estate of Lavern Edgar Riffe, Deceased, are dismissed with prejudice, with each party bearing its own costs and attorney fees.

\$/ JAMES O. ELLISON

James O. Ellison District Judge

APPROVED AS TO FORM AND SUBSTANCE:

Fred S. Nelson,

for Charter Oil Company

and Riffe Petroleum Company

By

James R. Eagleton, Actorney for Allene A. Riffe Individually and Allene A. Riffe, Executrix

of the Estate of Lavern Edgar

Riffe, Deceased

Enteled ..

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA 28 1985

Jack C. Silver, Liein CHARTER OIL COMPANY, U. S. DISTRICT COURT a Florida corporation, Plaintiff, vs. No. 83-C-26-E ALLENE A. RIFFE, individually and as Executrix of the Estate of Lavern Edgar Riffe, Deceased, Defendant. ALLENE A. RIFFE, individually and as Executrix of the Estate of Lavern Edgar Riffe, Deceased, Plaintiff, vs. No. 84-C-402-E RIFFE PETROLEUM COMPANY, an Illinois corporation,

DISMISSAL WITH PREJUDICE

Defendant.

Pursuant to the stipulations contained in the November 30, 1984 Settlement Agreement containing six pages between the parties hereto, all claims made in the subject suits by Charter Oil Company, Riffe Petroleum Company, Allene A. Riffe, individually,

REPROYEU AS TO

and Allene A. Riffe as Executrix of the Estate of Lavern Edgar Riffe, Deceased, are dismissed with prejudice, with each party bearing its own costs and attorney fees.

Entered this day of January, 1985.

James O. Ellison District Judge

APPROVED AS TO FORM AND SUBSTANCE:

Fred S. Nelson, Attorney

for Charter Oil Company

and Riffe Petroleum Company

Ву

James R. Eagleton, Attorney

for Allene A. Riffe Individually and Allene A. Riffe, Executrix

of the Estate of Lavern Edgar

Riffe, Deceased

In re:

CHIEF FREIGHT LINES COMPANY,

Debtor.

Case No. 84-C-988-E

ORDER

Jack C. Silver, Clerk

II. S. DISTRICT COURT

NOW on this ZBT day of January, 1985 comes on for hearing the motion of Booth, Marcus & Pierce, co-counsel to the Creditors' Committee of the Chief Freight Lines Company, for withdrawal of the reference, pursuant to 28 U.S.C. § 157(d), with respect to its application for interim allowance of fees and reimbursement of expenses submitted herewith, and the Court, being fully advised in the premises finds the same should be denied.

The Court has reviewed the file and finds the Bankruptcy Court has held hearings and extensively considered the matters urged. Only findings of fact remain to be issued. For this Court to assume jurisdiction at this particular time would require duplicious effort. This Court is cognizant of the need of litigants for swift determination of all aspects of litigation; however, it is equally mindful of the press of business before all courts within our system of justice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the motion of Booth, Marcus & Pierce, co-counsel to the Creditors' Committee of the Chief Freight Lines Company, for withdrawal of the reference, pursuant to 28 U.S.C. § 157(d), with respect to

its application for interim allowance of fees and reimbursement of expenses submitted herewith be and is hereby denied.

AMES 0/.

JAN 28 1985

UNITED STATES OF AMERICA, Plaintiff,)	Jack C. Sliver, Clerk U. S. DISTRICT COURT
vs.))	No. 83-CR-132-E and 84-C-856-E
TERRY STRICKLAND,)	
Defendant.	Ś	

ORDER

The Court has before it the motion of Defendant Strickland to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. In support of his motion Mr. Strickland alleges the denial of appeal, in that the Court failed to appoint appellate counsel for him; ineffective assistance of counsel; failure to sentence under the Youth Corrections Act; and the imposition of an excessive sentence.

Although a defendant is not required to exhaust remedies under § 2255, the most appropriate forum for questions which may be raised on direct appeal is the appeal itself. The Court has been informed that counsel has been appointed to represent Defendant on appeal, and that a brief in the appeal is being filed by appointed counsel. In deference to the disposition of these issues on appeal, this Court will refrain from ruling on Defendant's motion at this time. See <u>United States v. Brillant</u>, 274 F.2d 618 (2nd Cir. 1980), cert. denied 363 U.S. 806, rehearing denied 364 U.S. 857; Rule 5, 28 U.S.C. § 2255.

را راو بشاند د IT IS THEREFORE ORDERED AND ADJUDGED that the motion of Defendant Strickland to vacate, set aside or correct sentence be and the same is hereby denied.

ORDERED this 25th day of January, 1985.

AMES . ELLISON

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 25 1985

LACK C. SILVER. CLERK

WALTER N. HANDY CO., INC., a Missouri corporation,

Plaintiff,)

v. No. 84-C-110-B

PUBLIC SERVICE COMPANY OF OKLAHOMA, an Oklahoma corporation,

Defendants.

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW Walter N. Handy Co., Inc. and Public Service Company of Oklahoma and, pursuant to Rule 41(a)(1)(ii) hereby dismiss with prejudice all claims filed in this action, each party to bear its own costs. Walter N. Handy Co., Inc. and Public Service Company of Oklahoma are the sole parties to this action.

DOERNER, STUART, SAUNDERS, DANIEL & ANDERSON

Richard P. Hix (OBA No. 4241) Lewis N. Carter (OBA No. 1524)

By: Kick Art J. FAY 1000 Atlas Life Building

Tulsa, Oklahoma 74103

(918) 582-1211

Attorneys for the Defendant Public Service Company of Oklahoma

The Land Control of Land

CONNER & WINTERS

Laurence L. Pinkerton (OBA No. 7168)

First National Tower Tulsa, Oklahoma 74103

Attorneys for Plaintiff Walter N. Handy Company, Inc.

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			-	مست

JAMES B. FORESMAN and BARBARA ELLEN FORESMAN,	JAN 25 1985 Jack C. Silver, Clark
Plaintiffs,	U. O. DESTRUCT CONTRACT
v.) No. 84-C-802-B
LASSETTER PETROLEUM CORPORATION, DAN L. CLARK and DENISE S. CLARK,))
Defendant.	·)

ORDER

This matter comes before the Court on plaintiffs' motion for summary judgment, filed December 18, 1984. Defendants have never responded to the motion. Therefore, pursuant to Rule 14(a) of the Local Rules of the Northern District of Oklahoma, the Court deems the matters urged in the motion for summary judgment to be confessed by defendants.

This is an action for rescission based upon the sale by defendants to plaintiffs of interests in oil and gas wells. Plaintiffs claim the sale violated federal and Oklahoma laws requiring registration of securities. Plaintiffs seek summary judgment on their claims.

The undisputed evidence shows that on May 16, 1984, plaintiffs paid Lassetter Petroleum Corporation \$65,000 for certain undivided fractional interests in oil and gas wells. The interests in the wells were offered for sale by Lassetter by means of public advertisements, and a means of interstate commerce—the telephone—was used in connection with the offer,

sale and delivery of the interests. The individual defendant, Dan Clark, is president, director and owner of Lassetter. The individual defendant, Denise Clark, is secretary/treasurer and a director of Lassetter. Both individual defendants had knowledge of the sale and directly participated in it by executing a purchase agreement and assignments of oil and gas leases. The sale was not registered by Lassetter with either the Securities and Exchange Commission or the Oklahoma Securities Commission.

The Court finds the interests sold by defendant to plaintiffs were securities within the meaning of the Securities Act of 1933, 15 U.S.C. §77b(1), and within the meaning of the Okahoma Securities Act, 71 Okl.St.Ann. §2(20). The Court further finds the securities were unregistered at the time of the sale, in violation of the 1933 Act, 15 U.S.C. §773, and in violation of the Oklahoma Securities Act, 71 Okl.St.Ann. §§ 301, 402 and 201(a).

The Court therefore concludes defendants are liable to plaintiffs for rescission of the sale of the securities. 15 U.S.C. §77L; 71 Okl.St.Ann. §408(a). Plaintiffs are entitled to recover from defendants the purchase price of the securities—\$65,000—less the amount received by plaintiffs for production—\$1,340—or a total of \$63,660, plus prejudgment interest at the rate of 10% per annum from May 16, 1984, to the date of judgment, in accordance with 71 Okl.St.Ann. §408. Plaintiffs are directed to file application for attorneys fees, along with supporting affidavits and documentation, on or before February 8, 1985.

ENTERED this 25 day of January, 1985.

THOMAS R. BRETT UNITED STATES DISTRICT JUDGE

JAMES B. FORESMAN and BARBARA ELLEN FORESMAN,

v.

Plaintiffs,

No. 84-C-802-B

LASSETTER PETROLEUM CORPORATION, DAN L. CLARK and DENISE S. CLARK,

Defendants.

JUDGMENT

In keeping with the Court's Order sustaining plaintiffs' motion for summary judgment, Judgment is hereby entered in favor of the plaintiff, James B. Foresman and Barbara Ellen Foresman, and against the defendants, Lassetter Petroleum Corporation, Dan L. Clark and Denise S. Clark, in the amount of Sixty Three Thousand Six Hundred Sixty and No/100 Dollars (\$63,660.00), with prejudgment interest from May 16, 1984, to this date at a rate of 10% per annum, and with postjudgment interest at 9.09% per annum, the current coupon yield rate. Additionally, the Court awards costs in favor of plaintiffs and against said defendants.

ENTERED this 25 day of January, 1985.

THOMAS R. BRETT

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JMI 25

WILLIE JAMES HILL,	JALES OF THE CLERK JALES OF THE COURT
Petitioner,	3
vs.	Case No. 84-C-576-B
MACK H. ALFORD,	
Respondent.	3

ORDER OF DISMISSAL

This matter comes before the Court on respondent's motion to dismiss this action for failure to exhaust state remedies. Petitioner admits he has not exhausted his state remedies and requests the Court dismiss this action without prejudice in order that he might pursue available state remedies.

Premises considered, the Court hereby dismisses this action, without prejudice.

IT IS SO ORDERED this _____ day of January, 1985.

THOMAS R. BRETT

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C.E. EQUIPMENT COMPANY, INC. HARCO CORPORATION

JACA CLU EMEGLERIA U.S. EISTREDI COURT

Plaintiff(s),

vs.

No. 83-C-237-C

GENERAL CATHODIC PROTECTION SERVICES,

Defendant(s).

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 24 day of January , 1985

UNITED STATES DISTRICT JUDGE

H. DALE COOK

JAN 24 1085

MORRIS BURK,	•
Plaintiff,	,
-vs-	
GRACE NATIONAL RESOURCES CORP. Defendant,	
KENNETH E. TUREAUD,	

Third Party Defendant.

Gelos vide riccurt

No. 82-C-721-C

STIPULATION FOR DISMISSAL

It is hereby stipulated and agreed, by and between the attorneys for the respective parties hereto, that this matter should be dismissed, with prejudice, subject to the approval of this Court, without costs in favor of either party against the other.

Dated this 24 day of January, 1981

MONNET, HAYES, BULLIS, THOMPSON & EDWARDS

James M. Peters

Randall A. Breshears

1719 First National Center West Oklahoma City, Oklahoma 73102

Attorneys for Grace National Resources Corp.

CHARLES W. SHIPLEY STEPHEN E. SCHNEIDER ROBIN A. RAINEY

ву:

Suite 3401 First National Tower

Tulsa, Oklahoma 74103

(918) 582-1720

Attorneys for Plaintiff

Approved this 35 day of

, 19<u>85</u>.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Jack C. Silver, werk U. S. DISTRICT COURT

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL VAN LENTEN,

Plaintiff,

V.

No. 84-C-544-B

STANDARD OIL COMPANY,
an Indiana corporation,
D. D. JOHNSON and
J. F. McBRAYER,

Defendants.

ORDER

This matter comes before the Court on plaintifff's motion for attorney fees incurred in behalf of the plaintiff in filing his motion to remand to the District Court of Tulsa County. The motion is overruled for the reasons set forth below.

Plaintiff moved to remand this action after defendants removed to this Court. The Court sustained plaintiff's motion to remand for the reason that there was substantial doubt concerning diversity jurisdiction and defendants failed to meet their burden to show the action was properly removed. Plaintiff now moves for attorney fees on the ground defendants acted vexatiously and in bad faith when they filed their removal petition.

As a general rule, federal courts may not award attorney fees to a prevailing party unless permitted by statute. Plaintiff's assertion that Title 12 O.S. § 936 is a basis for awarding attorney fees is without merit because the plaintiff has not prevailed on the merits of the case but only the narrow remand question. A narrow exception to the general rule allows an award of attorney

fees when a party's opponent "acts in bad faith, vexatiously, wantonly, or for oppressive reasons." Hall v. Cole, 412 U.S. 1, 5 (1973) (quoting 6 J. Moore, Federal Practice ¶ 54.77[2], p. 1709 (2d ed. 1972)). The award can be imposed only in exceptional cases and for dominating reasons of justice. Cornwall v. Robinson, 654 F.2d 685 (10th Cir. 1981); United States v. 2,116 Boxes of Boned Beef, 726 F.2d 1481 (10th Cir. 1984); Zoyoipoulos v. Palombo, 584 F. Supp. 867 (D. Colo. 1984).

Applying the Tenth Circuit standard, the Court cannot find the requisite "bad faith" on the part of defendants in their petition for removal. Plaintiff's motion for attorney fees is denied.

IT IS SO ORDERED this 2 day of January, 1985.

THOMAS R. BRETT

MIDWESTERN ENGINE & EQUIPMENT COMPANY an Oklahoma corporation,

JAN 24 655

Plaintiff,

U.S. DISTRICT COURT Case No. 84-C-700-E

VS.

DOUGLAS HUGHES, an individual,

Defendant.

Natice of

DISMISSAL

COMES NOW the Plaintiff, MIDWESTERN ENGINE & EQUIPMENT COMPANY, an Oklahoma corporation, by and through its attorney, Charles A. Gibbs III, of Livingston, Abercrombie and Randle, and dismisses the above captioned Complaint with prejudice and represents to the Court as follows:

- 1. THAT the Defendant has filed no responsive pleadings in this case and no attorney has entered an appearance on behalf of said Defendant.
- 2. THAT since the filing of Plaintiff's Complaint, the Defendant has satisfied all obligations contained in the Promissory Note which was the basis for Plaintiff's Complaint.

THEREFORE, Plaintiff dismisses the above captioned matter with prejudice.

> LIVINGSTON, ABERCROMBIE AND RANDLE, a Professional Corporation.

Вν

Charles A. Gibbs III 4870 South Lewis, Suite 110 Tulsa, Oklahoma 74105 918-747-1365

Certificate of Service

I hereby certify that on this $\frac{L^2}{2}$ day of January,1985, I mailed a true and correct copy of the above and foregoing Dismissal to the Defendant, DOUGLAS HUGHES, an individual, care of Douglas M. McIntyre, Esquire, 50 Briar Hollow Lane, Suite 660 East, Houston, Texas 77027, with correct and proper postage fully prepaid thereon.

Charles A. Gibbs III

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL VAN LENTEN,

Plaintiff,

V.

No. 84-C-544-B

STANDARD OIL COMPANY,
an Indiana corporation,
D.D. JOHNSON and
J.F. McBRAYER,

Defendants.

ORDER

This matter comes before the Court on defendant's motion to reconsider the Court's Order remanding the case to Tulsa County District Court. Defendants' motion is overruled for reasons set forth below.

Plaintiff filed his petition in Tulsa County District Court on December 21, 1983. On May 17, 1984, plaintiff was granted leave to file an Amended Petition, which was filed instanter. Defendants filed their petition for removal on June 12, 1984. On July 31, 1984, this Court sustained plaintiff's motion to remand.

Defendants based their petition for removal on two grounds. First, defendants argue that at the time the original Petition was filed the action did not appear to be removable because "Plaintiff falsely alleged that he was a citizen of the State of Oklahoma. However, such allegations were untrue in that Plaintiff had permanently moved his residence and domicile to Michigan on or about December 1, 1983, prior to the filing of

such action." Defendants' Removal Petition, p. 1. Plaintiff's original petition alleged that "Plaintiff is a resident and citizen of the State of Oklahoma." Plaintiff's Amended Petition states that "Plaintiff, at the time of commencing this action, was a resident and citizen of the State of Oklahoma, residing in Stillwater." Further, plaintiff filed an affidavit with the Court on June 27, 1984 in which he stated that he has at all relevant times been a citizen of the State of Oklahoma. Plaintiff's affidavit is uncontroverted. Defendants neither filed an affidavit in response nor verified their removal petition as required by 28 U.S.C. \$1446(a). Because defendants' first basis for removal is unsupported, they have failed to meet their burden of showing proper removal on this first ground.

As a second ground for removal, defendants claim the action first became removable upon the filing of plaintiff's Amended Petition May 17, 1984. Defendants allege that only then did it become "clearly apparent that Defendants McBrayer and Johnson improperly had been made parties to this action." Defendants' Removal Petition, p.2.

Title 28 U.S.C. \$1446(b) provides:

"(b) The petition for removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

"If the case stated by the initial pleading is not removable, a petition for removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." (Emphasis added)

The task of this Court, then, is to determine whether plaintiff's Amended Petition gave defendants their first notice the case was or had become removable.

"If the action was originally removable, but was not removed, an amendment of the claim or the addition or substitution of defendants will not make the case again removable for purposes of the time limitations unless the amendment or the addition of the new defendant gives rise to another basis for removal."

1A J. Moore, Federal Practice ¶0.168[3.-5-6]. The courts have read into \$1446(b) an exception where the plaintiff files an amended complaint that so changes the nature of his action as to constitute "substantially a new suit begun that day." Wilson v. Intercollegiate (Big Ten) Conference Athletic Assciation, 668 F.2d 962, 965 (7th Cir. 1982), quoting Fletcher v. Hamlet, 116 U.S. 408 (1886).

From a review of the two petitions, the Court concludes defendants were put on notice of the fraudulent joinder question upon receipt of the initial petition on December 29, 1983. Removability first became apparent at that time since the initial petition appears to make allegations against resident defendants only in their roles as agents and employees of defendant Standard. Since the initial petition does not appear to raise colorable claims against the resident defendants, a "substantially new suit" did not begin on May 17, 1984.

Because defendants could have ascertained the case was removable upon receipt of the original petition on December 29, 1983, the 30 day removal period of \$1446(b) did not begin to run anew upon the filing of the amended petition. Defendants' motion to reconsider is overruled.

DATED this 24 day of January, 1985.

THOMAS R. BRETT

Unless plaintiff voluntarily drops the individual resident defendants, the case will remain non-removable. Oklahoma State Union of the Farmer's Educational and Cooperative Union of America v. Hartford Fire Insurance Co., 307 F.Supp. 415 (W.D. Okla. 1970); lA J. Moore, Federal Practice, ¶0.161[2].

Exteled

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

SINCERA LEE MOTTO,

Plaintiff,

vs.

Case No.: 84-C-416-B

THE CITY OF BROKEN ARROW,
an Oklahoma municipal
corporation, et al.,

Defendants.

ORDER OF DISMISSAL

ON This 24 day of January, 1985, upon the written application of the parties for a Dismissal with Prejudice of the Compalint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

S/ THOMAS R. BRELL

JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

D. GREGORY BLEDSOE,

Attorney for the Plaintiff,

RANDY A. RANKIN,

Attorney for the Plaintiff,

JOHN H. LIEBER,

Attorney for the Defendants.

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

BOISE CASCADE CORPORATION, a Delaware corporation,

Plaintiff,

vs.

Case No. 81-C-441-B

THE BURNING HILLS GROUP OF COMPANIES, INC., a/k/a BURNING HILLS GROUP OF COMPANIES, LIMITED, an Oklahoma corporation, and COMMUNICATION ASSOCIATES, INC., an Oklahoma corporation,

Defendants.

ORDER OF DISMISSAL

On January 17, 1984, this matter was called for trial and plaintiff announced it had been settled. The Court instructed the parties to submit settlement papers to the Court by January 31, 1984. Plaintiff has since advised the court on March 1, 1984 and on May 16, 1984 that it would submit the necessary settlement papers to the Court. Noting that no papers have been submitted to date, the Court hereby dismisses the matter on its own motion.

IT IS SO ORDERED this 23 day of January, 1985.

THOMAS R. BRETT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. RALEIGH PAYTON SHIPLEY, Defendant. CIVIL ACTION NO. 83-C-772-B

ORDER

On the motion of the Plaintiff, United States of America, acting on behalf of Farmers Home Administration, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, to which there is no objection, and for good cause shown it is hereby ORDERED that the Judgment of Foreclosure entered on July 11, 1984, be amended by adding the following provision at the end thereof:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of the Defendants, Raleigh Payton Shipley and Phyllis J. Shipley, to satisfy the money judgment of the Plaintiff an Order of Sale should be issued to the United States Marshal for the Northern District of Oklahoma, demanding him to advertise and sell with appraisement the 1978 Ford Truck described in the lien entry form attached to the Complaint as Exhibit "N" and attached hereto, and apply the proceeds of the sale as follows:

> In payment of the costs of this action First: accrued and accruing incurred by the Plaintiff, including costs of the sale of

said collateral; and

In payment of the Judgment rendered herein Second: in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

and after the sale of the above described collateral, under and by virtue of this Judgment and Decree, all of the defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the 1978 Ford Truck or any part thereof.

S/ THOMAS R. BRETT

THOMAS R. BRETT United States District Judge

APPROVED:

ETER BERNHARDT

Assistant United States Attorney

460 U.S. Courthouse

Tulsa, Oklahoma 74103

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 2 3 1985

FRONTIER ROOFING AND MATERIAL COMPANY, an Oklahoma corporation,

Jack C. Silver, Gerk
U. S. DISTRICT COURT

Plaintiff,

No. 84-C-289-B

vs.

ERA CORPORATION, a Minnesota corporation,

Defendant and Third Party Plaintiff,

vs.

CONTECH, INC., a Minnesota corporation,

Third Party Defendant.

ORDER

The Stipulation for Dismissal With Prejudice comes on for consideration before me, the undersigned of this District Court, and the Court, being advised that the Plaintiff and Defendant have reached a settlement of the Plaintiff's claims and Defendant's counterclaim, the Court finds that the action filed by the Plaintiff, Frontier Roofing and Material Company, an Oklahoma corporation, should be and is hereby dismissed with prejudice, and further, that the counterclaim filed by the Defendant, ERA Corporation, a Minnesota corporation, should be and is hereby dismissed with prejudice, all parties to pay their own costs and attorney's fees.

SO ORDERED this 23' day of January, 1985.

S/ THOMAS R. BRETT

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

V.

Petitioner,

NO. 84-C-183-B

RON ANGELONE, Warden, JHCC, et al.,

Defendants.

ORDER

This matter comes before the Court on the petition for writ of habeas corpus of Kenneth R. Rider. Respondents have objected to the petition and submitted a transcript of trial proceedings. For the reasons set forth below, the petition for writ of habeas corpus is hereby denied.

Petitioner was convicted of Robbery by Fear after Former Conviction of a Felony in the District Court of Mayes County, Oklahoma, on November 1, 1976, in Case No. CRF-76-131. He was sentenced to 20 years imprisonment. The petitioner then filed an application for post-conviction relief in the Mayes County District Court on September 2, 1982. The District Court denied his application on December 28, 1982. The Court of Criminal Appeals granted an alternative writ of mandamus to the petitioner on July 19, 1983. The alternative writ ordered the Mayes County District Court to dispose of the matter, or in the alternative to send copies of the order to the petitioner. Petitioner then filed his notice of appeal in Mayes County District Court on August 9, 1983.

Upon a review of the record, the Court concludes that the petitioner has not deliberately by-passed orderly state procedure, and is not barred from consideration in this habeas corpus proceeding. See Fay v. Noia, 372 U.S. 391, 438 (1963).

Petitioner alleges that he was denied due process and equal protection of the law during the second stage of his proceedings "where unconstitutional statute was used to enhance punishment against me." He also alleges that the "state statute under which the petitioner has had punishment against him enchanced (Title 21 O.S. 1976, §51 B) was ruled unconstitutional in the case of <u>Hicks v. Oklahoma</u>, 100 S.Ct. 2227 and also under <u>Thigpen v. State</u>, Okl.Cr., 571 P.2d 467 (1977)..."

The Court has reviewed the transcript of the sentencing and determined that the petitioner's term was not enhanced pursuant to §51B. The pertinent Section 51B states:

"B. Every person who, having been twice convicted of felony offenses, commits a third, or thereafter, felony offenses within ten (10) years of the date following the completion of the execution of the sentence, shall be punished by imprisonment in the State Penitentiary for a term of twenty (20) years plus the longest imprisonment for which the said third or subsequent conviction was punishable had it been a first offense; . . " (Emphasis added)

The term for a first conviction of Armed Robbery by Fear is not less than ten (10) years imprisonment. 21 O.S. §798. Had the District Court relied on §51B to enhance the petitioner's punishment, then the Court would have imposed a sentence of thirty (30) years.

However, the transcript of the sentencing indicates that the court was aware that the petitioner had two prior convictions and that the minimum sentence for Armed Robbery by Fear after a former conviction was not less than ten years. (Tr. at 25-27). Petitioner was sentenced to twenty (20) years. This Court does not find that punishment to be excessive. See Johnson v. State, 461 P.2d 966 (Okla.Cr. 1969); Kelsey v. State, 569 P.2d 1028 (Okla.Cr. 1977).

Therefore, the Court finds that petitioner's claim for violation of his due process and equal protection rights is not cognizable in this proceeding, and the petition for writ of habeas corpus must be denied.

THOMAS R. BRETT

- Entitled

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

LEROY CHUPP,)				į	£ *,
Plaintiff,)				**)	
vs.)					
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,))))		,			
Defendant.)	CIVIL	ACTION	NO.	84-C	-841-F

ORDER

The Court hereby finds 1) that this action was pending before this Court on September 19, 1984; and 2) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Accordingly, it is this <u>JZ</u> day of <u>Jan.</u>, 1985, ORDERED that this action be and hereby is remanded to the Secretary of Health and Human Services pursuant to Section 2 of

¹ Plaintiff's Social Security Number is 447-42-4589.

the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

UNITED STATES DISTRICT JUDGE

JSKJAMES U. ELLISON

E-teled

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

A CONTRACT

C,I,T, C	ORPORATION,)	
	Plaintiff,)	
vs.)	No. 84-C-973-E
BEN PRAT	T,)	
	Defendant.)	

JUDGMENT

On this A day of January, 1985, the request of the Plaintiff herein for default judgment against Defendant, Ben Pratt, comes on for consideration; the Court finds that judgment should be entered by default pursuant to Rule 55 of the Federal Rules of Civil Procedure and in accordance with the Affidavit of Default filed herein by Plaintiff.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff, C.I.T. Corporation, have and recover judgment against Defendant, Ben Pratt, for the sum of \$14,714,60 together with interest thereon at the rate of 18% per annum from January 10, 1985, together with the costs of this action in the sum of \$60.00 and a reasonable attorney's fee in the sum of \$1,470.00 for all of which let execution issue.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff, C.I.T. Corporation, has a first, valid and

paramount security interest covering One Model TD8E International Crawler Tractor, s/n 7543, and that Plaintiff is entitled to immediate possession of said Crawler Tractor and Defendant is hereby ordered and directed to deliver up and surrender same to Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the security interest of Plaintiff, C.I.T. Corporation, be foreclosed by special execution and the proceeds applied first to the costs of this action and the expenses of the sale, and then to the indebtedness owing to Plaintiff, C.I.T. Corporation, and that any surplus be paid into court to abide the further order of this Court,

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

JAMES O. ELLISON

APPROVED;

LOXAL T. ROACH

320 South Boston Suite 1012

Tulsa, Oklahoma 74103

(918) 584-4740

ATTORNEY FOR PLAINTIFF, C,I,T, CORPORATION

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES LEE WILLIAMS,)		
Plaintiff,)		
vs.	Ś	No.	84-C-787-E
PANHANDLE LINES, INC., et al.,			
Defendants.	Ś		

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this day of January, 1985.

JAMES O. ELLISON

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

DIANE WINONA JOHNSON,)	
Plaintiff,)	
VS.)	No. 84-C-786-E
PANHANDLE LINES, INC., et al.,)	
Defendants.)	

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. it is not necessary that the action remain upon the calendar of the Court.

IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

DATED this _____ day of January, 1985.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

BJS:slb 12/12/84 - Entered

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MILCHEM, INC., a corporation,

Plaintiff.

vs.

NO. 84-C-739-

BASS EXPLORATION, an Oklahoma corporation,

Defendant.

ORDER

NOW, on this 16th day of November, 1984, the above referenced matter came on for status conference hearing. Plaintiff, Milchem, Inc., was represented by their counsel, Ungerman, Conner & Little; Defendant, Bass Exploration, was represented by their counsel, Best, Sharp, Thomas, Glass & Atkinson.

Defendant announced to the Court that they would confess judgment as prayed for in Plaintiff's Complaint.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff is hereby granted judgment against the Defendant, Bass Exploration, an Oklahoma corporation, for the principal sum of \$34,790.38, with interest thereon at the rate of 15% per annum from date of judgment until paid, court costs, and a reasonable attorney's fee, which the parties stipulate to be \$500.00.

LAW OFFICES

Ungerman, Conner & Little

MIDWAY BLDG. 2727 EAST 21 ST. SUITE 400

P. O. BOX 2099 Tulsa, oklahoma 74101 (Signed) H. Dale Cook

Judge of the United States
District Court

APPROVED AS TO FORM AND CONTENT:

UNGERMAN CONNER & LITTLE

B. Jack Smith

Attorneys for Plaintiff,

BEST, MARP, THOMAS, GLASS & ATKINSON

Ву

Joseph A. Sharp, Attorneys for Defendant

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

SANTA FE TRAIL TRANSPORTATION COMPANY,	JAN 22 1935
Plaintiff,	Jack C. Silver, Clen U. S. Dietmor cour
vs.	No. 84-C-607-B
MONIE EUGENE BATES,	\(\)
Defendant.	\(\)

ADMINISTRATIVE CLOSING ORDER

The parties having requested the Court to stay this cause pending determination of Case No. 83-C-514-C now pending before the Tenth Circuit Court of Appeals, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final determination of the appeal now before the Tenth Circuit in Case No. 83-C-514-C, the parties have not reopened the proceedings for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 22 day of January, 1985.

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THOMAS R. BRETT UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

Silver

SHIRLEY DOUGLAS,

Plaintiff,

vs.

CIVIL ACTION NO. 83-C-543-E

MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,

Defendant.

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed December 27, 1984 in which it is recommended that Plaintiff's claim for disability benefits under the the Social Security Act be denied and that Judgment be entered for the Defendant. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the matters presented to it, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is Ordered that Judgment be and hereby is entered for the Defendant.

Dated this 182 day of January, 1985.

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MM21 1004

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

DWIGHT A. WALKER,

Plaintiff,

v.

No. 83-C-469-E

MARGARET M. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES,

Defendant.

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed on December 21, 1984, in which it is recommended that this case be remanded to the Secretary for further administrative proceedings. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the matters presented to it, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is hereby Ordered that this case be remanded to the Secretary for further proceedings consonant with the Findings and Recommendations of the Magistrate.

Dated this 18th day of January, 1985.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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Exel lid

4810-007 HHP/clr COLL26

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MID-STATES AIRCRAFT ENGINES, INC.,)

Plaintiff,)

Vs.) No. 84-C-438E

JOSEPH C. RANDOLPH, JACK RHOADES,)

JOE DUNCAN, JACK RHOADES AIRCRAFT)

SALES, INC., A Corporation, and)

JACK RHOADES AVIATION, INC., A)

Corporation,)

Defendants.)

AGREED JUDGMENT

Now on the Aday of Ann., 1985, this matter comes before the Court for its approval of the Agreed Judgment, prepared by Plaintiff's counsel and approved as to form by counsel for both Plaintiff, MID-STATES AIRCRAFT ENGINES, INC. and the Defendants, JACK RHOADES, JACK RHOADES AIRCRAFT SALES, INC. and JACK RHOADES AVIATION, INC. This pleading is being presented to the Court in order to reduce to judgment the provisions of the Joint Stipulation of Liability as to the three above mentioned defendants, said Stipulation having been approved by counsel for both parties as well as the parties, themselves, and filed with the Court Glerk's effice on January 1985.

HHP HHP HHP

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff, MID-STATES AIRCRAFT ENGINES, INC., be granted judgment in its favor and against the Defendants.

JACK RHOADES, JACK RHOADES AIRCRAFT SALES, INC. and JACK RHOADES AVIATION, INC., in the amount of \$10,000 in cash or in the form of commissions and discounts received as a result of work and labor referred by the three defendants to the Plaintiff, for which the defendants will receive credit.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, JACK RHOADES, JACK RHOADES AIRCRAFT SALES, INC. and JACK RHOADES AVIATION, INC., are to liquidate the amount of this judgment on or before June 1, 1986 and that execution of this judgment will be stayed until that date.

S/	JAMES	Ο,	ELLISON
 	JUDG	Ē	

APPROVED AS TO FORM:

ALLIS & VANDIVORT, INC.

Attorneys for Plaintiff

Mid-States Aircraft Engines,

Inc.

LAWSON, PUSHOR, MOTE & CORIDEN

Ву

Attorneys for Defendants, Jack Rhoades, Jack Rhoades Aircraft Sales, Inc. and Jack Rhoades Aviation, Inc.

ΙN	THE	UNITED	SI	ATES	DIST	RIC	T C)UR7	ľ
FOR	THE	NORTHER	ίN	DISTR	ICT	OF	OKLA	AHON	1 A

	TOR THE	NORTHERN DISTRICT OF	OKBAHOHA
WAYNE L	LEE POTEAT,)	1410g x 155
)	· · · · · · · · · · · · · · · · · · ·
	Petitioner,)	Sign.
)	
vs.) No.	84-C-648-E
)	
TIM WES	ST,)	
	-)	
	Respondent.)	

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

This matter is before the Court on the petition for a writ of habeas corpus filed by Wayne Lee Poteat, and the response of Respondent Tim West pursuant to Order of the Court.

The Petitioner is presently incarcerated pursuant to a judgment and sentence rendered on the 23rd day of February, 1982 in Tulsa County District Court. The Petitioner was charged with second degree burglary in count 1 and attempted burglary of a vending machine after former conviction of a felony in count 2. Punishment was assessed at one year in the Tulsa County Jail on count 1 and 20 years in the custody of the Department of Corrections on count 2.

The Petitioner filed a direct appeal from his conviction to the Court of Criminal Appeals, which conviction was affirmed on November 8, 1983.

This Court has determined that an evidentiary hearing is unnecessary in that none of the conditions in 28 U.S.C. § 2254(d) are present. See Sumner v. Mata, 449 U.S. 539, 101 S.Ct. 764

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(1981).

Petitioner asserts that the trial court subjected him to double jeopardy in violation of the Fifth Amendment of the United States Constitution. He asserts that the finding of guilt and the fixing of punishment in count 1 for the lesser included offense of entering a building with unlawful intent barred the jury from hearing count 2 since both counts constituted one transaction.

The transcript of the record reveals that the officer responding to a call concerning the car dealership observed the Defendant holding a dolly upside down and beating it against a pop machine through one of the windows of the building. A broken window was found in the building, and an officer discovered the Defendant underneath a desk in one of the offices. The Defendant admitted breaking into the car dealership, but asserted he had done so to get out of the cold.

The prevailing law in the Tenth Circuit with regard to determining the validity of a double jeopardy claim remains the "same evidence" test endorsed by the Supreme Court in <u>Blockburger v. United States</u>, 284 U.S. 299, 52 S.Ct. 180 (1932), and recently reaffirmed in <u>Brown v. Ohio</u>, 432 U.S. 161, 97 S.Ct. 2221 (1977). See <u>United States v. Puckett</u>, 692 F.2d 663 (10th Cir. 1982).

That rule provides that offenses charged are identical in law and fact only if the facts alleged in one would sustain a conviction if offered in support of the other. "Where one count rquires proof of a fact which the other count does not, the separate offenses charged

are not identical, even if the charges arise out of the same acts."

citations omitted, Puckett, supra at page 667.

Applying the "same evidence" test, it is clear to the Court that the offenses for which Petitioner was charged and convicted are not identical. As for count I, "the crime of burglary is complete upon entry, and the evidence of the completion of the intended crime is only evidence of intent; it is not a necessary element of burglary". Ziegler v. The State, 610 P.2d 251 (Okl.Cr. 1980). The burglary of the car dealership building was complete upon entry. Any evidence presented by the prosecution in regard to the eventual attempt to burglarize the vending machine was not a required element of count 1, but only evidence going to intent.

As to count 2, the crime of attempted burglary of the vending machine was proven when evidence was presented with regard to intent, the overt act toward the commission of the crime, and failure of consummation of the crime. Parks v. State, 529 P.2d 513 (Okl.Cr. 1974). Evidence of Defendant's entry into the building was irrelevant to the proof of count 2, and evidence of the eventual attempt on the vending machine was not necessary for proof of count 1. Therefore Petitioner has failed to meet the test enunciated in Puckett and Blockburger that offenses charged are identical in law and fact only if the facts alleged in one would sustain a conviction if offered in support of the other. The burden of proof to establish the existence of double jeopardy is on the Defendant. United States v. Eggert, 624 F.2d 973, 975 (10th Cir. 1980).

This Court therefore finds that Petitioner's double jeopardy arguments fail, and therefore his petition for writ of habeas corpus must be denied.

IT IS THEREFORE ORDERED AND ADJUDGED that the petition for writ of habeas corpus of Wayne Lee Poteat be and the same is hereby denied.

ORDERED this 1874 day of January, 1985.

JAMES O. ELLISON

-Britiled

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

V.

294.05 ACRES OF LAND, MORE OR
LESS, SITUATE IN OSAGE COUNTY,
STATE OF OKLAHOMA, AND F.I.
OIL COMPANY, AND UNKNOWN
OWNERS, ET AL.,

Defendants.

JUDGMENT

1.

Now, on this /8 day of , 1985, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation of the parties agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for the Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tracts Nos. 920ME, 925ME, 1124ME and 1126ME, as such estate and tracts are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

Service of Process has been perfected personally, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this case.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described in such Complaint. Pursuant thereto, on August 24, 1984, the United States of America filed its Declaration of Taking of such described property, and title to the described estate in such property should be vested in the United States of America as of the date of filing the Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court, as estimated compensation for the taking of a certain estate in subject tracts a certain sum of money, and all of this deposit has been disbursed, as set out below in paragraph 12.

7.

The defendants named in paragraph 12 as owners of the subject property are the only defendants asserting any interest in such property. All other defendants having either disclaimed or defaulted, the named defendants were, as of the date of taking, the owners of the subject property and, as such, are entitled to receive the just compensation awarded by this judgment.

The owners of the subject tracts and the United States of America have executed and filed herein a Stipulation For Settlement of Captioned Action wherein they have agreed that just compensation for the estate condemned in subject tracts is the agreements recited in such Stipulation plus monetary compensation in the total amount of \$1,135,000.00 (not subject to interest), and such Stipulation should be approved.

9.

This judgment will create a deficiency between the amount deposited as estimated compensation for the estate taken in subject tracts and the amount fixed by the Stipulation For Settlement of Captioned Action, and the amount of such deficiency should be deposited for the benefit of the owners. Such deficiency is set out in paragraph 12 below.

10.

It is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the tracts listed in paragraph 2 herein, as such tracts are particularly described in the Complaint filed herein; and such tracts, to the extent of the estate described in such Complaint, are condemned, and title thereto is vested in the United States of America, as of August 24, 1984, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such estate.

It is Further ORDERED, ADJUDGED and DECREED that on the date of taking, the owners of the estate condemned herein in subject tracts were the defendants whose names appear below in paragraph 12, and the right to receive the just compensation for the estate taken herein in such tracts is vested in the parties so named.

12.

It is Further ORDERED, ADJUDGED and DECREED that the Stipulation For Settlement of Captioned Action, mentioned in paragraph 8 above, hereby is confirmed; and the agreements and monetary sum thereby set forth are adopted as the award of just compensation for the estate condemned in subject tracts as follows:

TRACTS NOS. 920ME, 925ME, 1124ME and 1126ME

OWNERS:

A. B. Holcomb,
D. C. Holcomb, and
John McArtor, III, partners, doing business as
F.I. Oil Company.

13.

It is Further ORDERED, ADJUDGED and DECREED that the United States of America shall deposit in the Registry of this Court, to the credit of subject action, the deposit deficiency in the sum of \$377,380.00, and the Clerk of this Court then shall disburse the deposit for such tracts as follows:

To:

A. B. Holcomb, D. C. Holcomb, and John McArtor, III, partners, doing ---- \$377,380.00 business as F.I. Oil Company

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

GLADYS	B. BENNE	ΓT,)			
		Plaintiff,))	83-(-83 Case No. 84-C-838 -	18 - C	
vs.)	Case No. 84 C 838 -	c ,	er same
AGRICO	CHEMICAL	COMPANY,))	(¹ €		
		Defendant.	ý		MUS1	670)
					1 1	· •

ORDER

Upon the joint stipulation of attorneys for Plaintiff and Defendant, and for good cause shown, the Complaint of the Plaintiff against said Defendant is dismissed with prejudice to the filing of a future action.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

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DEUTSCHE CREDIT CORPORATION, a corporation,))		
Plaintiff,)		
vs.)	No.	84-C-692-C
RICHARD A. JAGGARS,)		
Defendant.)		

ORDER

Now before the Court for its consideration is the Motion for Default Judgment of Deutsche Credit Corporation, plaintiff, filed on November 9, 1984. The Court has no record of a response to this Motion for Default Judgment from Richard A. Jaggars, defendant. Rule 14(a) of the local Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) Briefs. Each motion, application and objection filed shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within ten (10) days after the filing of the motion or objection, and any reply memoranda shall be filed within ten (10) days thereafter. Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

Therefore, because the defendant has failed to comply with Local Rule 14(a) and no responsive pleading has been filed to

date herein, the Court concludes that Richard Jaggars has waived any objection to said motion and has confessed the matters contained herein.

Accordingly, it is the Order of the Court that plaintiff's Motion for Default Judgment should be and hereby is sustained.

IT IS SO ORDERED this 21 day of January, 1985.

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

THE BOARD OF TRUSTEES OF THE PIPELINE INDUSTRY BENEFIT FUND,)	
Plaintiff,	(
vs.) No. 84-C-1018C	
PER CONTRACT, INC., a Tennessee corporation,)))	
Defendant.	,	

ORDER OF DISMISSAL WITHOUT PREJUDICE

Upon the Application of the plaintiff, The Board of Trustees of the Pipeline Industry Benefit Fund, it is ordered on this 21st day of January, 1985, that the above captioned case be dismissed without prejudice to its refiling, for the reason that the parties find that filing of a lawsuit is not necessary for the resolution of their dispute at this time.

s/il DNI COOK

District Court Judge

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARTHA MARIE ANDERSON, Individually, and MARTHA MARIE ANDERSON, as Guardian of the Person and Estate of BENNIE E. ANDERSON,

Plaintiffs,

vs.

No. 84-C-646-C

O'DELL STEWARD, Individually,)
and O'DELL STEWARD d/b/a)
CRESCENT "S" COMPANY, ROBERT)
O'DELL STEWARD, and CRESCENT)
"S" COMPANY, an Oklahoma)
corporation,

Defendants.

ORDER OF DISMISSAL

NOW on this A day of December, 198%, the above styled and numbered cause coming on for hearing before the undersigned Judge of the United States District Court in and for the Northern District of Oklahoma, upon the Stipulation for Order of Dismissal of the Plaintiffs and Defendants herein; and the Court, having examined the pleadings and being well and fully advised in the premises, is of the opinion that said cause should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above styled and numbered cause be, and the same is hereby dismissed with prejudice.

s/H. DALE COOK

JUDGE OF THE U.S. DISTRICT COURT

APPROVAL AS TO FORM:

David P. Madden

Attorneys for Plaintiffs

Michael C. Stewart Attorneys for Defendants

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 21 PAS

UTICA NATIONAL BANK & TRUST COMPANY, a national banking association,	Y.S. DISTRICT COURT
Plaintiff,)
v.	No. 84-C-717-B
DELAWARE ENERGY SHARES, INC., a Delaware corporation; LONNIE M. DUNN, JR., an individual; and JOHN W. OHANIAN, JR., an individual,))))))
Defendants.	j

JUDGMENT

In keeping with the Findings of Fact and Conclusions of
Law filed herein this date, Judgment is hereby entered in favor
of the Utica National Bank & Trust Company, a national banking
association, Plaintiff, and against the Defendants, Lonnie M.
Dunn, Jr., and John W.Ohanion, Jr., as follows:

Against Lonnie M. Dunn, Jr., in the principal sum of Two Million One Hundred Twenty Five Thousand Dollars (\$2,125,000.00), plus accrued interest through the date hereon in the amount of \$637,795.07 (total principal and interest \$2,762,795.07), and interest thereafter accruing at the rate of \$1,047.74 per day;

Against John W. Ohanian, Jr., in the principal sum of Two Million Seven Hundred Ninety Five Thousand Seven Hundred Thirty-Four and 03/100 Dollars (\$2,795,734.03), plus accrued interest to the date hereon in the amount

of \$834,036.98 (total principal and interest \$3,629,771.01) and interest thereafter accruing at the rate of \$1,378.45 per day;

plus the costs of this action and a reasonable attorneys' fee if timely applied for pursuant to local court rules.

DATED this 21st day of January, 1985.

THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

NATIONAL TUBULAR SYSTEMS,)
INC., an Oklahoma corporation,)

Plaintiff,)

vs.)

COMEX
AUSSENHANDELSGESELLSCHAFT)
MBH, a German corporation,)

Defendant.) Case No. 84-C-913-B

NOTICE OF DISMISSAL WITH PREJUDICE

PURSUANT to Fed. R. Civ. P. 41(a)(1), Plaintiff,
National Tubular Systems, Inc., hereby dismisses this action
with prejudice as to the filing of any future action in this
matter.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE, COLLINGSWORTH & NELSON, INC.

Bv:

Frank M. Hagedorn Claire V. Eagan Jed L. Marcus

4100 Bank of Oklahoma Tower One Williams Center Tulsa, Oklahoma 74172 (918) 588-4099

ATTORNEYS FOR PLAINTIFF, NATIONAL TUBULAR SYSTEMS, INC.

CERTIFICATE OF MAILING

I hereby certify that on this day of January, 1985, a true and correct copy of the above and foregoing document was mailed to Mr. Larry Meyer of the firm of Covington & Reese, 1700 West Luke South, Suite 1100, Houston, Texas, 77027, with sufficient postage thereon having been fully prepaid.

Jed 4. Marcus

IN THE UNITED STATES DISTRICT C RT FOR THE NORTHERN DISTRICT OF OKLAHOMA

Entered

FILED

JAN 13 1935

DARWIN DALE LANDES,

Plaintiff,

Szek C. Silver, Clerk, U. S. DISTRICT COUPT

v.

No. 83-C-774-B

FRANK THURMAN, Tulsa County)
Sheriff, and TULSA COUNTY)
JAIL,

Defendants.

JUDGMENT

In keeping with the order entered by the Court December 18, 1984, in which defendants' motion for summary judgment was sustained, the Court hereby enters judgment in favor of the defendants, Frank Thurman and the Tulsa County Jail, and against the plaintiff, Darwin Dale Landes.

ENTERED this // day of January, 1985.

THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

NOTICE OF DISMISSAL WITHOUT PREJUDICE

PURSUANT to Fed. R. Civ. P. 41(a)(1), Plaintiff,
Denny's, Inc., hereby dismisses this action without prejudice
as to the refiling thereof.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE, COLLINGSWORTH & NELSON, INC.

By: // // Marcu

4100 Bank of Oklahoma Tower One Williams Center Tulsa, Oklahoma 74172 (918) 588-4099

ATTORNEYS FOR PLAINTIFF, DENNY'S, INC.

IN THE UNITED STATES DISTRICT COURT FOR THE ORTHERN DISTRICT OF OKLAHO

FILED

JAN 18 1985

Petitioner,

No. 84-C-582-B

MACK ALFORD, et al.,

Respondents.

ORDER

This matter comes before the Court on the petitioner's "Notice of Dismissal", in which petitioner requests the Court to dismiss this case without prejudice. The notice was filed October 9, 1984. Respondents have never objected or otherwise responded to the dismissal request. Therefore, pursuant to Rule 14 of the Local Rules of the Northern District of Oklahoma, the Court deems the matters urged in the dismissal request to be confessed by the respondents, and hereby orders this case dismissed without prejudice.

ENTERED this 18 day of January, 1985.

THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE LED

NORTHERN DISTRICT OF OKLAHOMA

JAN 1 8 1985 4

CENTRAL MARKET, INC., d/b/a AKSARBEN BEEF CO., a Nebraska corporation,	Jack C. Silver, Clerk U. S. DISTRICT COLOR	٠,
Plaintiff,		
vs.) Case No. 84-C-97-BT	
JACK G. STEELE, et al,		
Defendants.)	

ADMINISTRATIVE CLOSING ORDER

Defendant

The T.A. JENKINShaving filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other prupose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this /5 day of JANUARY , 1985

UNITED STATES DISTRICT JUDGE

THOMAS R. BRETT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

			FIFO
JIM T. CHOATE,)		TON 1995
Plaintiff,)		JAN (0, 10)
vs.)	Case No. 84-C-290~	Tack D
LEE JEAN SANDERS, et al.)		U.S. Listnot
Defendants.	Ś		
	,		
	ER OF DISM		
ON THIS 16 day of Jan	n .	, 19 <u>85</u> , upon th	e written appli-
cation of the parties for a Dism	issal with	Prejudice of the Co	mplaint and all
causes of action, the Court havi	ng examine	ed said application,	find that said
parties have entered into a comp	romise set	tlement covering all	claims and
have requested the Court to dism	iss said c	ause with prejudice	to any future
action, and the Court being full	y advised	in the premises find	s that said
Complaint should be dismissed pu	rsuant to	said application.	
IT IS THEREFORE ORDERED, AD	JUDGED AND	DECREED by the Cour	t that the
Complaint and all causes of action	on of Plai	ntiff filed herein a	gainst the
Defendants be and the same hereby	y are dism	nissed with prejudice	to any future
action.			
	/ <u>S/</u> UNITE	W. Dae Coo	DGE
APPROVALS:			
P. THOMAS THORNBRUGH,			
Attorney for Plaintiff			
JOHN HOWARD LIEBER			
John Lieber			
Artorney for Defendants			

Entered

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	JAN 1 8 1985
Plaintiff,	Jack C. Silver, Clerk
vs.	it so district come
RANDALL K. MASON,	
Defendant.) CIVIL ACTION NO. 84-C-537-B

DEFAULT JUDGMENT

This matter comes on for consideration this day of January, 1985, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Randall K. Mason, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Randall K. Mason, was served with Summons and Complaint on December 12, 1984. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Randall K. Mason, in the amount of \$1,059.78, plus interest at the rate of 15.05 percent per annum and administrative costs of \$.63 per month from August 11, 1983, and \$.68 per month from

January 1, 1984, until judgment, plus interest thereafter at the current legal rate of 9.09 percent from the date of judgment until paid, plus the costs of this action.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

JUDICIAL PANEL ON MULTIDISTRICT LITICATION BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE RICHARDSON-MERRELL, INC. "BENDECTIN" PRODUCTS LIABILETY 6 1984 LITIGATION (NO. II)

PATRICIA D. HOWARD CLERK OF THE PAREL Curtis R. Gann, et al. v. Merrell Dow Pharmaceuticals et al., N.D. Oklahoma, C.A. No. 84-C-974-C

C-1-85-00

CONDITIONAL TRANSFER ORDER

On February 9, 1982, the Panel transferred 47 civil actions to the United States District Court for the Southern District of Ohio for coordinated or consolidated pretrial proceedings pursuant to 285 U.S.C. §1407. Since that time, more than 300 additional civil actions have been transferred to the Southern District of Ohio. With the consent of that court, all such actions have been assigned to the Honorable Carl B. Rubin.

It appears from the pleadings filed in the above-captioned action that it involves questions of fact which are common to the actions previously transferred to the Southern District of Ohio and assigned to Judge Rubin.

Pursuant to Rule 9 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 89 F.R.D. 273, 278-79, the abovecaptioned action is hereby transferred under .28 U.S.C. §1407 to the Southern District of Ohio for reasons stated in the order of February 9, 1982, 533 F. Supp. 489, and with the consent of that court assigned to the Honorable Carl B. Rubin.

This order does not become effective until it is filed in the office of the Clerk of the United States District Court for the Southern District of Chio. The transmittal of this order to said Clerk shall be stayed fifteen days from the entry thereof and if any party files a notice of opposition with the Clerk of the Panel within this fifteen day period, the stay will be continued until further order of the Panel.

Inasmuch as no objection is pending at this time, the stay is lifted and this order bucomes effective

JAN 11 205

Potricia D. Howard

THIS IS A TRUE CREEK of the Panel

Clark of the Panel

Patricia D. Howard Clerk, Judicial Panel on Multidistrict Litigation

Patricia D.

THE PANEL:

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giral filed in my Office

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

TOTAL PETROLEUM, INC.,) a Michigan corporation,) Plaintiff, Vs. Civ No. 84-C-39E B & B TRADING COMPANY, an Oklahoma corporation, Defendant and Third Party Plaintiff, vs. TRACO PETROLEUM COMPANY, Third Party Defendant.

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW, Plaintiff Total Petroleum, Inc. ("Total"), by its attorney, Laurence L. Pinkerton of Conner & Winters, Defendant/
Third-Party Plaintiff B & B Trading Company ("B & B"), by its attorney Christopher J. Simpson of Pray, Walker, Jackman,
Williamson & Marlar, and Third-Party Defendant Traco Petroleum
Company ("Traco") by its attorney Scott M. Rhodes of Hastie and Kirschner, and pursuant to Rule 41, Federal Rules of Civil
Procedure, stipulate as follows:

I.

On January 23, 1984, Plaintiff filed its Complaint against B & B.

II.

On or about February 22, 1984, B & B filed its Third Party Complaint against Traco.

III.

Total, B & B, and Traco have entered into a Settlement

Agreement and Mutual Release resolving the various claims and

disputes which were the subject of the Complaint and the Third

Party Complaint.

IV.

Total, B & B, and Traco agree and stipulate that the pending Complaint and the Third Party Complaint should be dismissed with prejudice, each party bearing its respective costs and attorney's fees.

NOW, THEREFORE, subject to the Order of this Court, Plaintiff Total Petroleum, Inc., dismisses its causes of action against Defendant, B & B Trading Company, with prejudice; and B & B Trading Company hereby dismisses its causes of action against Third Party Defendant, Traco Petroleum Company, with prejudice.

DATED this ____ day of December, 1984.

LAURENCE L. PINKERTON KAREN C. CATHEY

Вţ

aurence L. Pinkerton

CONNER & WINTERS

2400 First National Tower Tulsa, Oklahoma 74193

Telephone: 586-5711

Attorneys for Plaintiff TOTAL PETROLEUM CORPORATION

J. WARREN JACKMAN CHRISTOPHER J. SIMPSON

Christopher J. Simpson PRAY, WALKER, JACKMAN, WILLIAMSON & MARLAR

2200 Fourth National Bank Buliding Tulsa, Oklahoma 74119 (918) 584-4136

Attorneys for Defendant and Third Party Plaintiff B & B TRADING COMPANY

SCOTT M. RHODES

HASTIE AND KIRSCHNER

Swite 3000, First Oklahoma Tower

210 West Park Avenue

Oklahoma City, Oklahoma 73102 (405) 239-6404

Attorneys for Third Party Defendant TRACO PETROLEUM COMPANY

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

Plaintiffs,

v.

CIVIL 83-C-792-B

JAN 17 1985

UNITED STATES OF AMERICA,

Defendant.

STIPULATION FOR DISMISSAL

It is hereby stipulated and agreed that the complaint in the above-entitled case be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of lixigation.

THOMAS G. POTTS P. O. Box 2976

Tulsa, Oklahoma 74101

Attorney for Plaintiffs

GLENN L. ARCHER, JR.

Assistant Attorney General

Tax Division

Department of Justice Washington, D.C. 20530

Attorney for Defendant

- Enteled

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OYLAHOMA

UNITED STATES OF AMERICA,

FILED

Plaintiff,

JAN 1 6 1985

vs.

Jack C. Silver, Clerk U. S. DISTRICT COMET

KENNETH R. QUILLEN and JO ANN QUILLEN, husband and wife; COUNTY TREASURER, Osage County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma,

Defendants.

CIVIL ACTION NO. 84-C-851-E

JUDGMENT OF FORECLOSURE

The Court being fully advised and having examined the file herein finds that the Defendants, Kenneth F. Quillen and Jo Ann Quillen acknowledged receipt of Summons and Complaint on October 23, 1984.

It appears that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have filed their answer on October 31, 1984; and that the Defendants,

Kenneth R. Quillen and Jo Ann Quillen, have failed to answer and their default has been entered by the Clerk of this Court on November 26, 1984.

The Court further finds that this is a suit based upon a certain promissory note for foreclosure of a real estate mortgage securing said promissory note upon the following described real property located in Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lots 2, 3, 4 and 242-A being a Revision and Resubdivision of a part of Frontier Shores 1, a subdivision in Osage County, Oklahoma according to the recorded plat thereof.

THAT on February 10, 1983, Kenneth P. Quillen and Jo Ann Quillen, executed and delivered to the United States of America, acting through the Administrator of Veterans' Affairs, their promissory note in the amount of \$24,650.00, payable in monthly installments with interest thereon at the rate of twelve (12) percent per annum.

That as security for the payment of the above described note, Kenneth P. Quillen and Jo Ann Quillen, executed and delivered to the United States of America, acting through the Administrator of Veterans' Affairs, a real estate mortgage dated February 10, 1983, covering the above described property. This mortgage was recorded on February 16, 1983, in Book 630, Page 615, in the records of Osage County, Oklahoma.

The Court further finds that Defendants, Kenneth R.

Quillen and Jo Ann Quillen, made default under the terms of the
aforesaid promissory note and mortgage by reason of their failure
to make monthly installments due thereon, which default has

continued and that by reason thereof the Defendants, Kenneth R. Quillen and Jo Ann Quillen, are indebted to the Plaintiff in the principal sum of \$24,488.48, plus interest at the rate of twelve (12) percent per annum from March 1, 1984 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County
Treasurer, Osage County, Oklahoma, has a lien on the property
which is the subject matter of this action by virtue of ad
valorem taxes for the year 1983 in the amount of \$74.23 plus
interest and penalty as provided by law. Said lien is superior
to the interest of the Plaintiff, United States of America.

IT IS FURTHEP ORDEPED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Osage County, Oklahoma, have and recover judgment in the amount of \$74.23, plus interest and penalty as provided by law and the costs of this action.

IT IS FURTHER ORDEPFD, ADJUDGED, AND DECRFFT that upon the failure of the Defendants, Kenneth R. Quillen and Jo Ann Quillen, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property;

Second:

In payment of the Defendant, County
Treasurer, Osage County, Oklahoma, in the
amount of \$74.23, ad valorem taxes which are
presently due and owing on said real
property, plus interest and penalty as
provided by law;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHEP ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above described real property, under and by virtue of this judgment and decree, the Defendants and all persons claiming under them since the filing of this Complaint,

be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS

United States

Assistant Umpted States Attorney

District Attorney, Osage County Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Osage County, Oklahoma

Enteled

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IVA LORENE LOWE and CHA DWAYNE LOWE,	RLES	FILED
	Plaintiffs,))
vs.) No. 84-C-13-Gardy C Silver Cletk
FIBREBOARD CORPORATION,	et al.,	No. 84-C-13-Gack C. Silver, Clerk W. S. DISTRICT COURT
	Defendants.	<i>)</i> }

ORDER OF DISMISSAL

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

LAW OFFICES

Ungerman, Conner & Little

MIDWAY BLDG. 2727 EAST 21 ST. SUITE 400

P. G. BOX 2099 Tulsa, Oklahoma 74191

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

	Jack C. Silver, Clerk
Defendants.)	JAN 15 mgg
SAINT FRANCIS HOSPITAL, INC.,) an Oklahoma corporation,) et al.,	FILED
vs.)	No. 82-C-137-C
Plaintiff,)	
JOHN DAVID TRAYNOR ECHOLS,)	

ENTRY OF JUDGMENT FOR ATTORNEY FEES

Pursuant to the Court's Order sustaining plaintiff's application for post-judgment attorney fees, judgment is entered against the defendants herein, jointly and severally, for attorney fees in the amount of \$15,785.00 for the benefit of the plaintiff, together with interest at the federal judgment interest rate from the date hereof.

Done this /// day of January, 1985.

AND BALL SOOK

United States District Judge

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN DAVID TRAYNOR ECHOLS,)
Plaintiff,)
vs.	No. 82-C-137-C
SAINT FRANCIS HOSPITAL, INC., an Oklahoma corporation, et al.,	FILED
Defendants.))) JAM 15 CII

ORDER

Jack C. Silver, Clerk H. S. DISTRICT COURT

Based on review of the affidavit, the Court finds that plaintiff's application for attorney fees should be granted. Accordingly, plaintiff is awarded attorney fees against the defendants herein in the amount of \$15,785.00.

IT IS SO ORDERED.

s/H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRCT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ALAN REED SMITH and HILDA D. SMITH

Plaintiffs

vs.

No. 84-C-774-C

THE CELOTEX CORPORATION (SUCCESSOR tO PHILLIP-CAREY MANUFACTURING CORPORATION AND THE PANACON CORPORATION); EAGLE-PICHER INDUSTRIES, INC. et al.

Defendants

FILED

JAN 15 1003

Mack C. Silver, Clerk

ORDER OF DISMISSAL WITH PREJUDICE OF DEFENDANT, ARMSTRONG CORK COMPANY

The Court, upon Application of the plaintiff and defendant, Armstrong, finds that the above captioned should be dismissed with prejudice as against defendant Armstrong only. The dismissal of defendant, Armstrong does not affect plaintiff's claims or causes of action against any remaining defendant.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the cause of action of plaintiffs, Alan Reed Smith and Hilda D. Smith, is hereby dismissed with prejudice to the bringing of any further action. Each party is to bear their own cost.

DATED this 14 day of fan, 1985.

s/H. DALE COOK

H. Dale Cook United States District Judge APPROVED:

Brent M. Rosenthal

8333 Douglas Avenue, Suite 1050 Dallas, Texas 75225

Attorneys for plaintiffs, Alan Reed Smith and Hilda D. Smith

Michael L. Bardrick 2140 Liberty Tower

Oklahoma City, Oklahoma 73102

Attorneys for defendant, Armstrong Cork Company

Enteled

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED COMMEC OF AMERICA	
UNITED STATES OF AMERICA	13 14 4 4000
Plaintiff,) JAN 1 4 1985
vs.	Jack C. Silver, Clerk U. S. DISTRICT COUR
JESSE L. KREWSON and RITA M. KREWSON,))
Defendants.) CIVIL ACTION NO. 84-C-249-E

JUDGMENT OF FORECLOSURE

of _______, 1985. The Plaintiff appears by Layn R.

Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney; and the Defendants, Jesse L. Krewson, and Rita M.

Krewson, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendants, Jesse L. Krewson, and Rita M. Krewson, were served by publishing notice of this action in the <u>Tri-State Tribune</u>, a newspaper of general circulation in Ottawa County, Oklahoma, once a week for six consecutive weeks beginning September 20, 1984, and continuing to October 25, 1984, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. § 170.6(A) since counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Jesse L. Krewson, and Rita M. Krewson, and service cannot be made upon said

Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known address of the Defendants, Jesse L. Krewson, and Rita M. Krewson. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Farmers Home Administration, and its attorneys, Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United Attorney, have fully exercised due diligence in ascertaining the true names and identities of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendants, Jesse L. Krewson, and Rita M. Krewson, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon certain promissory notes and for foreclosure of certain real

estate mortgages securing said promissory notes upon the following described real property located in Ottawa County, Oklahoma, within the Northern Judicial District of Oklahoma:

South Fifteen feet of Lot Seven (7), all of Lot Eight (8), and North Twenty feet of Lot Nine (9), in Block One (1) Maywood Addition to the City of Miami, Ottawa County, Oklahoma, according to the official recorded plat thereof.

THAT on November 29, 1977, Johnny M. Stanley, and Deborah G. Stanley executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$21,500.00, payable in monthly installments with interest thereon at the rate of 8 percent per annum.

That as security for the payment of the above-described note, Johnny M. Stanley, and Deborah G. Stanley executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated November 29, 1977, covering the above-described property. Said mortgage was recorded in Book 374, Page 615, in the records of Ottawa County, Oklahoma.

The Court further finds that on July 2, 1979, the Defendants, Jesse L. Krewson, and Rita M. Krewson, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Assumption Agreement, whereby they assumed liability for and agreed to pay the note and mortgage described above.

The Court further finds that on July 2, 1979, the Defendants, Jesse L. Krewson, and Rita M. Krewson, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$4,880.00, payable in monthly installments with interest thereon at the rate of 9 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Jesse L. Krewson, and Rita M. Krewson, executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated July 2, 1979, covering the above-described property. Said mortgage was recorded in Book 390, Page 836, in the records of Ottawa County, Oklahoma.

The Court further finds that on January 28, 1983, the Defendants, Jesse L. Krewson, and Rita M. Krewson, executed and delivered to the United States of America, acting through the Farmers Home Administration, a Peamortization and/or Deferral Agreement. By the terms of this Agreement, the total debt on the promissory notes referred to above on that date in the amount of \$22,811.51 was made principal.

The Court further finds that Defendants, Jesse L.

Krewson, and Rita M. Krewson, made default under the terms of the aforesaid notes, mortgages, Assumption Agreement, and Reamortization Agreement by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the Defendants, Jesse L. Krewson, and Rita

M. Krewson, are indebted to the Plaintiff in the principal sum of \$28,155.35, plus accrued interest of \$1,162.42 as of November 16, 1983, plus interest thereafter accruing at the rate of \$3.9843 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

IT IS THEREFORE OPDERED, ADJUDGED, AND DECPEED that the Plaintiff have and recover judgment against Defendants, Jesse L. Krewson, and Pita M. Krewson, in the principal sum of \$28,155.35, plus accrued interest of \$1,162.42 as of November 16, 1983, plus interest thereafter accruing at the rate of \$3.9843 per day, until judgment, plus interest thereafter at the current legal rate of \$9.08 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDEPED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Jesse L. Krewson, and Rita M. Krewson, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including costs of the sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

SI JAMES O. LLINUM

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney

NANCY NESBITT BLEVINS

Assistant United States Attorney

WILBUR C. CUNNINGHAM and EARLENE CUNNINGHAM

Plaintiffs

vs.

FIBREBOARD CORPORATION, JOHNS-MANVILLE SALES CORPORATION: OWENS-CORNING FIBERGLASS; EAGLE-PICHER INDUSTRIES, INC.; PITTSBURG CORNING CORPORATION; CLEOTEX CORPORATION; GAF CORPORATION; ARMSTRONG CORK COMPANY; STANDARD ASBETOS MANUFACTURING & INSULATING COMPANY; NICOLET INDUSTRIES, INC.; KEENE CORPORATION; COMBUSTION ENGINEERING, INC.; FORTY-EIGHT INSULATION, INC.; RYDER INDUSTRIES, INC.; OWENS-ILLINOIS, INC.; RAYMARK INDUSTRIES, INC.; FLINTKOTE COMPANY; ROCK WOOL MANUFACTURING) H. B. FULLER COMPANY; UNARCO INDUSTRIES, INC.; H. K. PORTER COMPANY; and NATIONAL GYPSUM CO.

Defendants

No. 84-C-471-E

FILED

JAN 14 1985

Jack C. Silver, Clerk U. S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE OF DEFENDANT ARMSTRONG CORK COMPANY

The Court, upon Application of plaintiffs and defendant Armstrong, finds that the above captioned should be dismissed with prejudice as against defendant Armstrong only. The dismissal of defendant Armstrong does not effect plaintiff's claims or causes of action against any remaining defendant.

Wherefore, it is ordered adjudged and decreed that plaintiffs Wilbur C. Cunningham and Earlene Cunningham's cause of

action against defendant Armstrong herein is hereby dismissed with prejudice to the bringing of any further action. Each party is to bear their own cost.

DATED this /4 day of January, 1984.

James 6. Ellison United States District Judge

APPROVED:

Fred Baron

Brent M. Rosenthal

8333 Douglas Avenue, Suite 1050

Dallas, Texas 75225

Attorney for plaintiffs, Wilbur C. Cunningham and Earlene Cunningham

Robert S. Baker

Michael L. Bardrick 2140 Liberty Tower

Oklahoma City, Oklahoma 73102

Attorney for defendant, Armstrong Cork Company

IN THE UNITED STATES DISTRICT COURT

JAN 14 1985

FOR THE NORTHERN DISTRICT OF OKLAHOMA MACK C. SHARR CLERK

U.S. SISTRICT COURT

C.I.T. COPORATION, a foreign corporation,

Plaintiff.

vs.

No. 84-C-876-C

RUTHERFORDS QUALITY MACHINE & MANUFACTURING COMPANY, an Oklahoma corporation, and BOBBY RUTHERFORD and GLENDA RUTHERFORD, husband and wife, Defendants.

JOURNAL ENTRY OF JUDGMENT

)

ON this ____ day of January, 1985, the claims of Plaintiff, C.I.T. Corporation, and Defendants come on for hearing in their regular order; Plaintiff appears by its attorney, Loyal J. Roach; Defendants appear by their attorney, Patrick O'Connor; after hearing the statements and stipulations of counsel and being fully advised in the premises, the Court finds that this Journal Entry of Judgment should be entered by agreement of the parties hereto with the following orders, directives and judgments generally in favor of Plaintiff and against the Defendants.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff, C.I.T. Corporation, have and recover judgment against the Defendants, Rutherfords Quality Machine & Manufacturing Company, Bobby Rutherford and Glenda Rutherford, and each of them, jointly and severally, in the sum of \$569,125.94 together with interest thereon at the rate of 18% per annum and an attorney's fee in the sum of \$5,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff, C.I.T. Corporation, has a first, valid and paramount security interest covering the personal property, equipment and accounts described in Exhibit "A" annexed hereto and made a part hereof and that Plaintiff is entitled to immediate possession of said personal property, equipment and accounts and Defendants herein are ordered and directed to surrender, turn over and deliver same for collection and foreclosure.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff, C.I.T. Corporation, holds a second lien and mortgage upon a tract of land in Delaware County, Oklahoma, securing the amount owing herein, the legal description of which is annexed hereto as Exhibit "B",

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the security interests and mortgage interests of Plaintiff, C.I.T. Corporation, be foreclosed and the proceeds applied first to the costs of this action and the expenses of the sale, and then to the indebtedness owing to Plaintiff, C.I.T. Corporation, and that any surplus be paid into Court to abide the further order of this Court; Plaintiff has elected to foreclose and sell the properties above-described with appraisement.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the court that the Plaintiff, C.I.T. Corporation, hereby is awarded judgment on the defenses and counterclaims asserted herein by Defendants in their answer.

APPROVED:

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

LOYKL J. ROACH,

ATTORNEY FOR PLAINTIFF,

C.I.T. CORPORATION

DEFENDANT, BOBBY JOE/RUTHERFORD

DEFENDANT, GLENDA SUE RUTHERFORD

RUTHERFORDS QUALITY MACHINE & MANUFACTURING COMPANY

President

PATRICK O'CONNOR,

ATTORNEY FOR DEFENDANTS

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Exhibit "A"

equipment and machinery whether now owned or hereafter acquired.

That certain tract of real property situated in Tract A and Tract B of Carter Cabin Sites, a county subdivision in Section 26, Township 25 North, Range 23 East, Delaware County, Oklahoma, more particularly described as follows, to-wit:

Beginning at the NE corner of Tract A, thence South 250.4 feet for a point of beginning, thence South 31° 53' East 120 feet, thence South 58° 31' West 147.7 feet to the U.S. Highway No. 59 and 25 right-of-way, then NW along said right-of-way 120 feet, thence North 55° 27' East 168 feet to the point of beginning, containing 0.44 acres, more or less,

Exhibit "B"

		/7 JAIN 1 1 1985
ARROW SPECIALTY COMPANY,)	
Plaintiff,))	view U. aniver, Cheffi V. S. DISTRICT COURT
vs.	į	No. 84-C-885-C /
MUTHANA N. AL-NASSERI))	
Defendant.	í	

ORDER

Now before the Court for its consideration is the motion of defendant Muthana N. Al-Nasseri to dismiss, filed on December 11, 1984. The Court has no record of a response to this motion from plaintiff Arrow Specialty Company. Rule 14(a) of the local Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

(a) Briefs. Each motion, application and objection filed shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within ten (10) days after the filing of the motion or objection, and any reply memoranda shall be filed within ten (10) days thereafter. Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

Therefore, in that plaintiff has failed to comply with local Rule 14(a) and no responsive pleading has been filed to date herein, the Court concludes that plaintiff has waived any

objection to said motion and has confessed the matters contained therein.

Accordingly, it is the Order of the Court that defendant's Motion to Dismiss should be and hereby is sustained.

IT IS SO ORDERED this ______ day of January, 1985.

H. DALE COOK

Chief Judge, U. S. District Court

Judgment?

Entered

Ser Colors Richer Colors

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

POZOS DRILLING, LTD./81,
Plaintiff,

v.

NORTHWEST EXPLORATION COMPANY, TEXAS INTERNATIONAL PETROLEUM CORPORATION and ROBINSON BROTHERS DRILLING COMPANY,

Defendants.

No. 82-C-1023-B

ORDER OF DISMISSAL

Upon the Application of Pozos Drilling, Limited/81, and with the approval of the Chapter 11 Trustee for the Estate of Robinson Brothers Drilling Company and for good cause shown, Robinson Brothers Drilling Company is hereby dismissed.

S/ THOMAS R. BRETT

Judge of the United States
District Court

PINOCCHIO'S CHILD CARE CENTER) JAN 11 1985
INC., Debtor in possession d/b/a RICHMOND ACADEMY,	JACK G. SILVER, CLERK U.S. DISTRICT COURT
Plaintiff,))
v.	No. 84-C-777 C
TINA D. BOHMFALK,)
Defendant.)

NOTICE OF DISMISSAL

Pursuant to Rule 41(a)(1) of the Fed.R.Civ.Proc., this action is hereby dismissed by the Plaintiff herein, service of process having not been effectuated.

Dated this $/\partial$ day of January, 1985.

Respectfully submitted,

FELDMAN, HALL, FRANDEN, WOODARD & FARRIS

By:
Stephen C. Stapleton
OBA No. 10972
Enterprise Bldg., #816
522 S. Boston
Tulsa, OK 74103-4609
918-583-7129

ATTORNEYS FOR PLAINTIFF, PINOCCHIO'S CHILD CARE CENTER, INC.

PINOCCHIO'S CHILD CARE CENTER) INC., Debtor in possession) d/b/a RICHMOND ACADEMY,) Plaintiff,) V. No. 84-C-778	- " (· · · · · · ·
Plaintiff,)) v.) No. 84-C-778	I M85 A
)	- 00081
SANDRA DENTSE WILSON)	
(
Defendant.)	

NOTICE OF DISMISSAL

Pursuant to Rule 41(a)(1) of the Fed.R.Civ.Proc., this action is hereby dismissed by the Plaintiff herein, service of process having not been effectuated.

Dated this ___/\(\frac{1}{2}\) day of January, 1985.

Respectfully submitted,

FELDMAN, HALL, FRANDEN, WOODARD & FARRIS

Stephen C. Stapleton OBA No. 10972 Enterprise Bldg., #816 522 S. Boston Tulsa, OK 74103-4609 918-583-7129

ATTORNEYS FOR PLAINTIFF, PINOCCHIO'S CHILD CARE CENTER, INC.

PINOCCHIO'S CHILD CARE CENTER
INC., Debtor in possession
d/b/a RICHMOND ACADEMY,

Plaintiff,

V.

ROY WILLIAMS,

Defendant.

NOTICE OF DISMISSAL

Pursuant to Rule 41(a)(1) of the Fed.R.Civ.Proc., this action is hereby dismissed by the Plaintiff herein, service of process having not been effectuated.

Dated this ____/\(\triangle \) day of January, 1985.

Respectfully submitted,

FELDMAN, HALL, FRANDEN, WOODARD & FARRIS

By:
Stephen C. Stapleton
OBA No. 10972
Enterprise Bldg., #816
522 S. Boston
Tulsa, OK 74103-4609
918-583-7129

ATTORNEYS FOR PLAINTIFF, PINOCCHIO'S CHILD CARE CENTER, INC.

JAN II 1985

JACK C. SILVER. CLERK
U.S. DISTRICT COURT

PINOCCHIO'S CHILD CARE CENTER

INC., Debtor in possession

d/b/a RICHMOND ACADEMY,

Plaintiff,

V.

No. 84-C-780 ©

WANDA ALEXANDER,

Defendant.

NOTICE OF DISMISSAL

Pursuant to Rule 41(a)(1) of the Fed.R.Civ.Proc., this action is hereby dismissed by the Plaintiff herein, service of process having not been effectuated.

Dated this /0 day of January, 1985.

Respectfully submitted,

FELDMAN, HALL, FRANDEN, WOODARD & FARRIS

By:

Stephen C. Stapleton
OBA No. 10972
Enterprise Bldg., #816
522 S. Boston
Tulsa, OK 74103-4609
918-583-7129

ATTORNEYS FOR PLAINTIFF, PINOCCHIO'S CHILD CARE CENTER, INC.

JAN II 385

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

INC., Debtor in possession

d/b/a RICHMOND ACADEMY,

Plaintiff,

V.

No. 84-C-781

PINOCCHIO'S CHILD CARE CENTER

Defendant.

NOTICE OF DISMISSAL

Pursuant to Rule 41(a)(1) of the Fed.R.Civ.Proc., this action is hereby dismissed by the Plaintiff herein, service of process having not been effectuated.

Dated this __/o __ day of January, 1985.

Respectfully submitted,

FELDMAN, HALL, FRANDEN, WOODARD & FARRIS

By:
Stephen C. Stapleton
OBA No. 10972
Enterprise Bldg., #816
522 S. Boston
Tulsa, OK 74103-4609
918-583-7129

ATTORNEYS FOR PLAINTIFF, PINOCCHIO'S CHILD CARE CENTER, INC.

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 11 1385

PHILLIP L. HANCOCK,

Plaintiff,

Vs.

BRUNSWICK CORPORATION,

Defendant.

Defendant.

JACK C. SELVER, CLERK U.S. DISTRICT COURT

ORDER

On January 7, 1985, plaintiff filed a Second Amended Complaint reducing his prayer for relief to \$6,000.00. This action was removed by defendant Brunswick Corporation on September 13, 1984 on the basis of diversity and jurisdictional amount. Seeing that the requisite jurisdictional amount is no longer present, the Court hereby remands this action to the District Court of Tulsa County, Oklahoma.

Defendant's removal bond is exonerated.

IT IS SO ORDERED this ______ day of January, 1985.

THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Entitled

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 1 0 1985

Jack C. Silver, Clerk U. S. DISTRICT COMPAT

CATHY L. STANLEY,

Plaintiff,

Vs.

No. 83-C-25-E

TANK SERVICE, INC., a

corporation,

Defendant.

ORDER

Upon the Joint Stipulation of the Plaintiff Cathy L. Stanley and the Defendant Tank Service, Inc. that the above-captioned cause be dismissed with prejudice, it is hereby ordered, adjudged, and decreed that the case of Cathy L. Stanley v. Tank Service, Inc., a corporation, United States District Court for the Northern District of Oklahoma, Case No. 83-C-25-E, be dismissed with prejudice, each party thereto to bear her or its own costs, expenses, and attorneys' fees.

S/ JAMES O. ELLISON

Honorable Judge James O. Ellison Judge of the United States District Court for the Northern District of Oklahoma

. Enteled

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, JAN 10 1085 JACK O. SILVER, CLERK U.S. DISTRICT COURT Plaintiff, VS. CARL G. HARDISON and DANA F. HARDISON, Defendants. CIVIL ACTION NO. 84-C-966-E

NOTICE OF DISMISSAL

COMES NOW the United States of America by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Peter Bernhardt, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 8th day of January, 1985.

UNITED STATES OF AMERICA

LAYN R. United States Attorney

Assistant United States Attorney 460 U.S. Courthouse

Tulsa, Oklahoma 74103 (918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the day of January, 1985, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Carl G. Hardison and Dana F. Hardison 5778 West First Street Tulsa, Oklahoma 74127

Assistant United States Attorney

FILE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MN-9 1985

MONTY DEAN HAMILTON,)
Plaintiff,)

Jack C. Silver, Clerk H. S. Bisthiet Cour

Plaintir

vs.

ALLEN LEDGEFIELD, DISTRICT ATTORNEY AND GORDAN McALESTEE, JUDGE,

Defendants.

No. 84-C-753-E

O R D E R

There being no response to the Defendants' motion to dismiss and more than sixty (60) days having passed since the filing of the same and no extension of time having been sought by Plaintiff the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Plaintiff has therefore waived any objection or opposition to the Defendants' motion. See <u>Woods Constr. Co. v. Atlas Chemical Indus., Inc.</u>, 337 F.2d 888, 890 (10th Cir. 1964).

The Defendants' motion to dismiss is therefore granted.

DATED this 9th day of January, 1985.

JAMES OF ELLISON

UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT for the northern district of oklahoma $\gamma_{\rm eff}^{\rm total}$

MAN - 9 (2)

Jack C. Silver, Clerk U: 9: BISTHIST BOURT

CHARLES EUGENE GIBSON,)	
Plaintiff,)	
vs.)	No. 84-C-808-E
MICHAEL C. TURPEN AND THE)	
EDITOR OF THE TULSA TRIBUNE,)	
Defendants.	Ś	-

ORDER

There being no response to the Defendants Michael C. Turpen and Tulsa Tribune's motions to dismiss and more than thirty (30) days having passed since the filing of the latest motion and no extension of time having been sought by Plaintiff the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Plaintiff has therefore waived any objection or opposition to the motions. See <u>Woods Constr. Co. v. Atlas Chemical Indus.</u>, Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The Defendants Michael C. Turpen and Tulsa Tribune's motions to dismiss are therefore granted.

DATED this 974 day of January, 1985.

JAMES 9% ELLISON

UNITED STATES DISTRICT JUDGE

OFS 1981 MID-YEAR DRILLING PROGRAM) and ELLEV DIVERSIFIED DRILLING) PROGRAM,)

10M - 9 (86)

Plaintiffs,

Jack C. Silver, Clerk U. S. DISTRICT COURT

vs.

Case No. 84-C-812-E

D-I EXPLORATION and D-I ENERGY, INC.,

Defendants.

ORDER OF DISMISSAL

Upon Motion of the Defendants, D-I EXPLORATION and D-I ENERGY, INC., to dismiss the lawsuit, the Court, after hearing arguments of counsel and reviewing the pleadings, finds that Defendant D-I EXPLORATION should be dismissed for lack of diversity jurisdiction.

IT IS THEREFORE ORDERED that the Defendant, D-I EXPLORATION be dismissed from the instant lawsuit for reason of non-diversity.

Dated this day of January, 1985.

SI JAMES O. ELLISON

United States District Judge

Approved as to form:

Thomas M. Ladner

HALL, ESTILL, HARDWICK, GABLE, COLLINGSWORTH & NELSON 4100 Bank of Oklahoma Tower Tulsa, Oklahoma 74172

Telephone: (918)588-2219

Attorneys for Plaintiffs, OFS 1981 Mid-Year Drilling Program and Ellev Diversified Drilling Program Stephen R. Pitcock O.B.A. No. 10439 WATSON & McKENZIE 1900 Liberty Tower

Oklahoma Čity, Oklahoma 73102 Telephone: (405)232-2501

Attorneys for Defendants, D-I Energy, Inc. and D-I Exploration

SRP/06/sp

INTERNATIONAL UNION, UNITED

AUTOMOBILE, AEROSPACE AND

AGRICULTURAL IMPLEMENT

WORKERS OF AMERICA AND ITS

AMALGAMATED LOCAL UNION NO.

1369,

Plaintiffs,

Vs.

Defendant.

JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard on cross-motions for summary judgment and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiff International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Amalgamated Local Union No. 1369 recover judgment of the Defendant Telex Computer Products, Inc., that the parties are ordered to arbitrate pursuant to the contract entered into by and between the parties, and that Plaintiff be awarded its costs of action.

DATED at Tulsa, Oklahoma this 9711 day of January, 1985.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

PRESTON BROWN and JOY BROWN, d/b/a B & M TRUCKING,

Plaintiffs,

٧.

No. 84-C-87-B

INSURISK EXCESS & SURPLUS LINES and REBSAMEN INSURANCE, a division of REBSAMEN COMPANIES, INC.,

Defendants.

ORDER

This matter comes before the Court on a motion to dismiss filed by additional party defendant River Plate Reinsurance Company. The Court concludes the motion should be sustained for the reasons set forth below.

On March 15, 1983, plaintiffs, then citizens of the State of Missouri, entered into an insurance contract in Springdale, Arkansas written through Insurisk Excess & Surplus Lines, a division of the defendant Rebsamen Companies, Inc. The policy of insurance issued by Insurisk Excess & Surplus Lines was written by Rebsamen Insurance, also a division of the defendant Rebsamen Companies, Inc., a Delaware corporation (hereinafter both divisions are collectively referred to as "Rebsamen"). The Rebsamen divisions have their principal offices in Little Rock, Arkansas. The contract between plaintiffs and Rebsamen was originally reinsured by River Plate Reinsurance Company, Ltd. ("River Plate") to the extent of 66.67% of the policy amount and by Bryanston

Insurance Company, Ltd., by 33.33% of the amount. By endorsement dated August 1, 1983, the reinsurance provisions were changed so that River Plate Reinsurance Company, Ltd., insures 100% liability under the policy.

River Plate is a Bermuda corporation with its principal place of business in Buenos Aires, Argentina. It has never applied for nor received a certificate of authority to transact business in Oklahoma.

On or about September 5 or 6, 1983, plaintiffs sustained the loss of a tractor and trailer in Tulsa County, Oklahoma while they were in the process of moving their residence from Branson, Missouri to Tulsa, Oklahoma. Plaintiffs set forth three causes of action against River Plate in their Amended Complaint: breach of contract, tortious bad faith breach of contract, and RICO violations. Plaintiffs served their Amended Complaint on River Plate through the Oklahoma Insurance Commissioner. The additional party defendant contends the Court has no personal jurisdiction as to River Plate, that River Plate never appointed the Insurance Commissioner to act as its agent for service of process and that the Insurance Commissioner lacks statutory authority to receive service on behalf of River Plate. Plaintiffs respond, first, that River Plate has waived by contract any defense of lack of personal jurisdiction and second, that River Plate has waived its right to object to insufficiency of process by obtaining extensions of time in which to file its motion to dismiss.

Plaintiff's waiver arguments rests on the following language contained on the first page of the insurance contract:

"It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due hereunder, Underwriters hereon, at the request of the Assured, will submit to the jurisdiction of any Court of competent jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

"It is further agreed that service of process in such suit may be made upon Kroll, Killarney, Pomerantz & Cameron, 500 Fifth Avenue, New York, New York 10036 and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or any appellate court in the event of an appeal.

"The above named are authorized and directed to accept service of process on behalf of the Underwriters in any such suit and/or upon the Assured's request to give a written undertaking to the Assured that they will enter a general appearance upon Underwriters' behalf in the event that a suit shall be instituted."

When <u>in personam</u> jurisdiction over a defendant is questioned, the plaintiff has the burden of establishing jurisdictional facts through sworn affidavits or other competent evidence. <u>Time Share Vacation Club v. Atlantic Resorts, Ltd.</u>, 735 F.2d 61 (3rd Cir. 1984); Compagnie des Bauxites de Guinee v. L'Union, 723 F.2d 357 (3rd Cir. 1983). Plaintiff herein has failed to meet its burden.

The underwriter for the contract was Insurisk Excess & Surplus Lines, a division of Rebsamen Companies, Inc. To establish that River Plate waived the defense of lack of personal jurisdiction plaintiff must establish an agency relationship between the underwriter and the reinsurer River Plate. Plaintiff merely makes the unsubstantiated allegation that Insurisk Excess & Surplus Lines and Rebsamen Companies acted as agents for River Plate. Agency is not

proved by the mere assertion that a person is an agent. The burden of proving agency is upon the person claiming the agent has the authority. Assoc. Discount Corp. v. Tune Construction Co., 192 F.Supp. 693, 702 (W.D.Ark. 1961). An insurer is not automatically considered an agent of a reinsurer vis-a-vis the insured. Aetna Insurance Co. v. Glen Falls, 453 F.2d 687 (5th Cir. 1972). Plaintiff has failed to establish an agency relationship by which Rebsamen waived River Plate's defense of lack of personal jurisdiction. Further, the contract herein exists between Rebsamen and the plaintiffs. Plaintiffs have failed to establish privity of contract between plaintiffs and the reinsurer.

Obtaining extensions of time usually does not constitute a waiver of the defense of lack of jurisdiction of the person and improper venue. 2A Moore's Federal Practice (2d Ed.) §12.12, at 2327 and cases cited at n. 18; D'Amico v. Treat, 379 F.Supp. 1004, 1007-1008 (N.D.III. 1974); Puett Electrical Starting Gate Corp., Bissell Town Co., 2 F.R.D. 550 (D.C.Ohio 1942).

River Plate's motion to dismiss is sustained.

IT IS SO ORDERED this day of January, 1985.

THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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TED POOLE AND SANDRA J. POOLE, HUSBAND AND WIFE, D/B/A CLASSY COACH RENTALS,

Plaintiffs,

vs.

)) NY OF

SAFECO INSURANCE COMPANY OF AMERICA, A FOREIGN INSURANCE COMPANY,

Defendant.

Hack C. Silvet, Clark
L. S. Histriet Court

No. 84-C-241-E

JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs Ted Poole and Sandra J. Poole, d/b/a Classy Coach Rentals take nothing from the Defendant Safeco Insurance Comapny, that the action be dismissed on the merits, and that the Defendant Safeco Insurance Company of America recover of the Plaintiffs Ted Poole and Sandra Poole its costs of action.

DATED at Tulsa, Oklahoma this 9th day of January, 1985.

JAMES Q. ELLISON

UNITED STATES DISTRICT JUDGE

TED	P 0	OLE	AND	SA	NDRA	J.	POOLE,
HUSE	AN	D AN	ID W	IFE	D/B	/ A	CLASSY
COAC	CH	RENI	ALS	,			

Plaintiffs,

SAFECO INSURANCE COMPANY OF AMERICA, A FOREIGN INSURANCE

COMPANY.

vs.

Defendant.

18 M = 9 2 4 4

Jack C. Silver, Clerk U. S. DISTRICT COLLET

No. 84-C-241-E

ORDER

There being no reply to the Defendant's motion for summary judgment and more than ten (10) days having passed since the filing of the motion for summary judgment and no extension of time having been sought by Plaintiffs, the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Plaintiffs have therefore waived any objection or opposition to the motion for summary judgment. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The Defendant's motion for summary judgment is therefore granted.

DATED this 9th day of January, 1985.

UNITÉD STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IAM = 9 BLE

UNITED STATES OF AMERICA,	Jack C. Silver, Clerk U. S. DISTRICT COURT
Plaintiff,) 0. 3. DISTRICT GOOK!
vs.) No. 82-C-1071-E
PRIME RESOURCES CORP. AND KENNETH ROSS,	
Defendants.	,

O R D E R

This matter is before the Court on motion of Plaintiff to dismiss that portion of the action seeking civil penalties. This Court finds that in the interest of judicial economy, and pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, the portion of this action seeking civil penalties from Plaintiff should be dismissed with prejudice.

IT IS THEREFORE ORDERED AND ADJUDGED that the Motion of Plaintiff for partial dismissal be, and the same is hereby granted.

IT IS FURTHER ORDERED that the portion of Plaintiff's complaint seeking civil penalties be dismissed with prejudice.

ORDERED this $9^{7/4}$ day of January, 1985.

JAMES O. ELLISON UNITED STATES DISTRICT JUDGE

- Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES E	RANSBOTTOM, et al)		JAN 9 1985
vs.	Plaintiffs,)		Jack C. Silvet, Clerk U. S. DISTRICT COVET
•••		ì	•	
DALCO P	ETROLEUM, INC.,)	Case No.	82-C-1190-BT
•	. Defendant & Third Party Plaintiff,)		•
vs.)		
	FLEMING, JR., Third Party Defendant.))		

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other prupose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 9 th day of JANUARY , 1985.

UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

MARY MORTON JOSLIN,)	FILED
Plaintiff,)	
vs.)	i⊽n - 8 Jaco
JOHNNY WAKES, d/b/a WAKES FARM & FEED, GARY DALE WATKINS, and R.B. SCHAFER ENTERPRISES, INC., a Missouri Corporation,))))	Jack C. Silver, Clerk U. S. DISTRICT COURT
Defendant.)	No. 84-C-501-E

ORDER

ON THIS day of January, 1984, the Joint Application for an Order of Dismissal with Prejudice came on before the Court for hearing. The Court finds that the parties have settled the issues in dispute and that the case should be dismissed with prejudice.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the plaintiff's claims against the defendants are hereby dismissed with prejudice.

S/ JAMES O, ELLISON

JUDGE OF THE UNITED STATES DISTRICT COURT

APPROVED AS TO FORM:
Duchard M. Kelilian
RICHARD GIBBON, Attorney for Plaintiff
Attorney for Plaintiff
Kay HWalle
RAY/H. WILBURN,

MEARION JAMES HORTON,	FILED
Plaintiff,) 0 1005
vs.) AN - 8 1995
GARY DALE WATKINS, et al.	Jack C. Silver, Clerk U. 3. DISTRICT COURT
Defendants.) No. 83-C-577-E

ORDER

ON THIS 7 day of _______, 1984, the Joint Application for an Order of Dismissal with Prejudice came on before the Court for hearing. The Court finds that the parties have settled the issues in dispute and that the case should be dismissed with prejudice.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the plaintiff's claims against the defendants are hereby dismissed with prejudice.

JUDGE OF THE UNITED STATES
DISTRICT COURT

APPROVED AS TO FORM:

STANLEY D. MONROE
Attorney for Plaintiff

RAY A. WILBURN,
Attorneys for Defendants,
Gary Dale Watkins and R.B. Schafer
Enterprises, Inc.

UNITED STAT	ES OF AMERICA,	}	JAN - 8 198 5
	Plaintiff,)))	Jack C. Silver, Clerk U. S. DISTRICT COVER
vs.)	Land Of Million
DALE W. JON	Defendant.) CIVIL	ACTION NO. 84-C-192-B
		ORDER	

Upon the Application of the Plaintiff, United States of America, it is hereby ORDERED that this case is dismissed without prejudice.

S/ THOMAS R. POETT

THOMAS R. BRETT United States District Judge

		FILED
UNITED STATES OF AMERICA,)	
Plaintiff,) }	INN - S 1860
vs.)	Jack C. Silver, Clerk U. S. DISTRICT COURT
MICHAEL E. HEARD,	ý	0' 9' Biangar 600Kt
Defendant.) No. 84-C-141-E	

JUDGMENT

This matter comes on for non-jury trial on the 7th day of January, 1985, the Plaintiff appearing by Layn P. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Michael E. Heard, appearing pro se.

The Court, being fully advised and having examined the file herein and having heard the evidence presented by the parties, finds that the Defendant, Michael E. Heard was served with Summons and Complaint and Summons and Amended Complaint. The Defendant filed his answer to the Complaint herein on September 7, 1984, and his answer to the Amended Complaint on January 7, 1985. The Court further finds that Defendant is indebted to Plaintiff in the amount of \$193.57. The Court finds that Defendant should pay this amount on or before twenty-four (24) months from this date. If said sum is not so paid, interest will begin to accrue on that date and Plaintiff may at that time but not before levy execution on said sum, plus interest.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Michael E. Heard in the amount of \$193.57. It is further ordered adjudged and decreed that Defendant shall pay said sum within twenty-four (24) months of this date. If said sum is not paid by Defendant as ordered, interest will begin to accrue on that date and Plaintiff may at that time but not before levy execution on said sum, plus interest.

M JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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Jack C. Silver, Clerk U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IKE MUNOZ,	Plaintiff,) }	
vs.) No.	84-C-57E
CARROTHERS CONSTRUCTION COMPANY, INC.,		;)	
	Defendant.) .)	

JOURNAL ENTRY OF DISMISSAL WITH PREJUDICE

NOW on this 1 day of 1985, comes on for hearing the oral motion of plaintiff to dismiss the above-entitled action with prejudice. Plaintiff appears by Robert E. Martin, his attorney. Defendant appears by William G. Haynes of Eidson, Lewis, Porter & Haynes and Danny P. Richey of Holliman, Langholz, Runnels & Dorwart, its attorneys. There are no other appearances.

THEREUPON, the court, having heard the motion and the evidence submitted in support thereof, and being well and fully advised in the premises, finds that all matters at issue in the above matter have been settled; that said action should be dismissed with prejudice to any further prosecution of the action and also with prejudice to the bringing of any further action arising out of the occurrences constituting the subject matter of this action. The costs are to be assessed against the plaintiff.

that the above-entitled cause, including all issues therein, be and the same is hereby dismissed with prejudice to any further prosecution of this action and with prejudice to the bringing of any further action arising out of the occurrences constituting the subject matter of this action; and that the costs are assessed against the plaintiff.

S/ JAMES O. ELLISON

District Court Judge

APPROVED:

Robert E. Martin

717 South Houston, Suite 401

Tulsa, OK 74127 (918) 587-7234

Attorney for Plaintiff

William G. Haynes

Eidson, Lewis, Porter & Haynes 1300 Merchants National Bank Bldg.

Topeka, KS 66612 (913) 233-2332

and

Danny P. Richey
Holliman, Langholz, Runnels & Dorwart
Suite 700, Holarud Building
Ten East Third Street
Tulsa, OK 74103 918/584-1471

Attorneys for Defendant

Entered

		Entered
	O STATES DISTRICT COURT ERN DISTRICT OF OKLAHOMA	FILED
ROBERT G. LELAND, an individual, Plaintiff,)))	U.S. DISTRICT COURT
vs.) No. 84-C-655-	·B
NORTH AMERICAN VAN LINES, INC., a Delaware corporation, and TULSA FEDERAL MOVING & STORAGE, INC., an Oklahoma corporation,	,)))	
Defendants.	ý	

ORDER OF DISMISSAL

Now on this appearing to the Court that this matter has been compromised and settled, this case is herewith dismissed with prejudice to the refiling of a future action.

S/, THOMAS R. BR247

United States District Judge

Entitled

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAH WA

UNITED STATES OF AMERICA,	100 = 7 200
Plaintiff, vs.	Jack C. Silver, Clerk U. S. DISTRICT COURT
DANNY J. COSSEY,)
Defendant.) CIVIL ACTION NO. 84-C-482-E

ORDER OF DISMISSAL

Now on this _____ day of January, 1985, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Danny J. Cossey have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Danny J. Cossey, be and is dismissed without prejudice.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

	FIGURES SEED CLERK FIGURE COURT
PETRA PETROLEUM CORPORATION,)
Plaintiff,)
v.	No. 84-C-37-E
RICKS EXPLORATION COMPANY, et al.,)))
Defendants.	'

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff, Petra Petroleum COMES the Corporation, Additional Party Defendant, Allied Oil & Gas Corporation, and the Defendant, Ricks Exploration Company, by and through their respective attorneys, Judith S. Brune of Holliman, Langholz, Runnels & Dorwart, and Thomas P. Goresen of Kirk & Chaney, and jointly advise this Court that the parties stipulate to the Plaintiff's dismissal with prejudice of its claims against Defendant, Ricks Exploration, as alleged in the above styled and numbered cause, pursuant to Rule 41(a)(1)(ii). Further, it is hereby stipulated that said dismissal does not in any way prejudice or affect the in its counterclaim claims asserted by Defendant Plaintiff, Petra Petroleum Corporation, and additional party, Allied Oil & Gas Corporation, as alleged in the above styled and numbered cause.

Further, the parties stipulate that each party shall bear its own attorney's fees and costs.

Dated this 7th day of January, 1985.

Respectfully submitted,

udith S. Brune

Holliman, Langholz, Runnels

& Dorwart

Suite 700, 10 East Third Street

Tulsa, Oklahoma 74103

(918) 584-1471

Attorney for Petra Petroleum Corporation and Allied Oil & Gas Corporation

Thomas P. Goresen

Kirk & Chaney

Suite 1300 Midland Center 134 Robert S. Kerr Avenue Oklahoma City, OK 73102

(405) 235-1333

Attorney for Ricks Exploration Company

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

EDNA N. BROOKFIELD,

Plaintiff,

Case No. 84-C-565-B

NORTHEAST COUNTIES OF OKLAHOMA ECONOMIC DEVELOPMENT ASSOCIATION; and GORDON E. HOPPE, in his official capacity as Executive Director of Northeast Counties of Oklahoma Economic Development Association,

Defendants.

STIPULATION OF DISMISSAL

N. Brookfield, Plaintiff in NOW, COME Edna OF OKLAHOMA COUNTIES NORTHEAST referenced cause, and ECONOMIC DEVELOPMENT ASSOCIATION, and GORDON E. HOPPE, Defendants, and, pursuant to Rule 41(a) ii, F.R.C.P., hereby jointly dismiss this cause with prejudice.

LOGAN, LOWRY, JOHNSTON, SWITZER, WEST & WYATT P. O. Box 558 Vinita, Oklahoma 74301

Attorneys for Defendants

LOUIS W. BULLOCK, Esquire Attorney at Law 406 South Boulder Avenue Suite 700 Tulsa, Oklahoma 74103

Attorney for Plaintiff

Donald K. (Swi

O.B.A. #8088

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKAHOMA

JAN - 4 1935/

UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 76, UFCWIU, AFL/CIO, Plaintiff,	Jack C. Silver, Clerk U. S. DISTRICT COUR
vs. SAFEWAY STORES, INC.,	No. 84-C-978-E
Defendant.)

ORDER

On this 18th day of December, 1984, pursuant to previous setting by the Court, there came on for hearing Plaintiff's Application for a Temporary Restraining Order. The Plaintiff appeared by its attorneys, E. Bryan Henson, Jr. and Hal F. The Defendant appeared by its attorneys, T. H. Eskridge and R. Casey Cooper. Both sides having announced ready, the Court proceeded to hear the matter. The Plaintiff presented its evidence Thereupon, the Court heard argument and statements of and rested. counsel, and being well and truly advised in the premises, finds and determines that the evidence presented is insufficient to show "irreparable harm", and insufficient to show that the Plaintiff does not have an adequate remedy under the arbitration provision of the collective bargaining agreement between the parties. Accordingly,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the injunctive relief requested by Plaintiff shall be and is hereby denied.

APPROVED AS TO FORM:

Attorney for Plaintiff

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Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

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JAN -4 1885

UNITED STATES OF AMERICA,)		U.S. DISTRICT
Plaintiff,	, }		
vs.)		
GEORGE R. ODUM,	Ś		
Defendant.)	CIVIL ACTION NO.	84-C-976-E

NOTICE OF DISMISSAL

COMES NOW the United States of America by

Layn R. Phillips, United States Attorney for the Northern

District of Oklahoma, Plaintiff herein, through Nancy Nesbitt

Blevins, Assistant United States Attorney, and hereby gives

notice of its dismissal, pursuant to Rule 41, Federal Rules of

Civil Procedure, of this action without prejudice.

Dated this 4ϖ day of January, 1985.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS United States Attorney

NANCY NESBITT BLEVINS
Assistant United States Attorney
460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the _____ day of January, 1985, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Mr. George R. Odum, 600 Birch Avenue, Sand Springs, Oklahoma 74063.

Many Misht Blevens Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN -4 1985

BRENDA GARRETT,)	JACK C. SILVER, CLERK U.S. DISTRICT COURT
Plaintiff,)	7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7
vs.))	Case No. 84-C-228 C
AETNA LIFE INSURANCE	j j	
COMPANY, a connecticut Corp.)	
)	
Defendant.)	

ORDER OF DISMISSAL

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

s/H. DALE COOK

JUDGE, DISTRICT COURT OF THE UNITED STATE, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

JOE B. WOMACK,

Attorney for the Plaintiff,

STEPHEN C. WILKERSON,

Attorney for the Defendant.

- Exteled

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DOVAN MUSIC, INC., BROCKMAN MUSIC, JOBETE MUSIC CO., INC. AND BLACK BULL MUSIC, INC.,

Plaintiffs,

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JAN - 4 1983

Jack C. Silver, Clerk U. S. DISTRICT COURT

SYLVESTER SMITH,

VS.

Defendant.

CIVIL ACTION NO. 84-C-660-E

ORDER OF DISMISSAL WITH PREJUDICE

BE IT REMEMBERED that on this _______ day of December, 198%, came the parties by and through their respective counsel of record and announced to the Court that all matters have been settled and that this case should therefore be dismissed with prejudice to the refiling thereof at Plaintiffs' cost and it is accordingly

ORDERED that the above-entitled and numbered cause be, and the same is hereby, dismissed with prejudice to the refiling thereof with costs taxed to Plaintiffs.

SIGNED and entered on the date first above written.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

JACKSON, WALKER, WINSTEAD, CANTWELL & MILLER

By:

J. Kyle DuVall

4300 InterFirst One 1401 Elm Street Dallas, Texas 75202

(214) 655-2978

ATTORNEYS FOR PLAINTIFFS

SAVAGE, O'DONNELL, SCOTT, MCNULTY & CLEVERDON

Bv:

C.B. Savage

Suite 300 202 West Eighth Street Tulsa, Oklahoma 74119 (918) 584-4716

ATTORNEYS FOR DEFENDANT

4325y

Entitled

IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OKLAHOMA

GRAND RIVER DAM AUTHORITY, a Public Corporation,

Plaintiff,

Vs.

Case No. 84-C-585-E

UNITED STATES OF AMERICA, Trustee and Owner of the legal title to certain land in Delaware County, Oklahoma, for the use and benefit of certain restricted Indians, and

MICHAEL LEON ISRAEL, TAMMY LYNN ISRAEL, ROY WAYNE SINOR and BRENDA M. SINOR, husband and wife, and Delaware County Treasurer,

Defendants.

FILED

1AH - 4 865

Jack C. Silver, Clerk U. S. DISTRICT COURT

FINAL JUDGMENT NUNC PRO TUNC

day of becember, 1984, this matter comes on for disposition on oral application of the plaintiff for an order confirming the commissioners' report, the Court finds that the appointment, oath and report of the said commissioners are in proper form, that plaintiff has paid into the Court Clerk for the use and benefit of the defendants the sum required by the report of said commissioners, together with the proper fees for the said commissioners and costs of this action; that the property described in plaintiff's petition is necessary for the purposes therein set out, that the plaintiff, Grand River Dam Authority, is vested with the power of eminent domain, has lawfully exercised said power and is entitled to take and acquire a perpetual easement for the construction, reconstruction, removal replacement, maintenance and operation of a line, or lines, of poles, towers, structures, wires and fixtures for the transmission of energy over and across the defendants' property, that defendants have not filed objections to the Report of Commissioners and the rights, title and interest being condemned by the plaintiff should be vested in the plaintiff in accordance

with law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THIS COURT that plaintiff has lawfully exercised its power of eminent domain by filing in this Court a complaint seeking the condemnation of certain herein described rights, title and interest in the defendants' property, that the appointment, oath and report of commissioners heretofore filed in the cause are in proper form, that plaintiff has paid into the registry of the Court Clerk for the use and benefit of the defendants the sum required by the report of commissioners and that the sum of \$6000.00, as found by the Commissioners, is adopted by the Court as the award of just compensation and damages for the rights, title and interests condemned by the plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THIS COURT that the Grand River Dam Authority is hereby vested with the perpetual right, privilege and authority to construct, reconstruct, remove, replace and maintain a line, or line, of poles, towers, structures, wires, and fixtures for the transmission of electric energy over and across the following described property:

A strip of land 150 feet in width located in the SW/4 SE/4 NW/4 and in the W/2 SE/4 SE/4 NW/4 of Section 10, Township 20 North, Range 23 East of the Indian Base and Meridian in Delaware County, Oklahoma, said strip being 75 feet either side of a centerline more particularly described as follows, to-wit:

Beginning at a point on the west line of said SW/4 SE/4 NW/4 of Section 10, said point being 384.6 feet northerly from the southwest corner thereof; thence easterly a distance of 990.1 feet more or less to a point on the east line of said W/2 SE/4 SE/4 NW/4 of Section 10, said point being 352.5 feet northerly from the southeast corner thereof.

It is FURTHER ORDERED, ADJUDGED, AND DECREED that the

Stipulation of the Defendants, filed herein on November 20, 1984, is approved and adopted by this Court. Therefore, the Clerk of this Court should disburse the funds on deposit for this case as follows:

To:

- 1. Roy Wayne Sinor and Brenda M. Sinor, jointly....\$2000.00
- 2. Area Director, Muskogee Area Office, B.I.A., for the I.I.M. amount of Tammy Lynn Israel.....\$2000.00
- 3. Area Director, Muskogee Area Office, B.I.A., for the I.I.M. amount of Michael Leon Israel.....\$2000.00

S/	JAMES	Ο.	ELLISON
			

District Judge

APPROVED AS TO FORM:

Alfred K. Morlan

Attorney for Plaintiff

: John P. Kerr

Attorney for Defendant, Roy Wayne Sinor and Brenda M. Sinor

Hubert A. Marlow, Asst. U.S. Attorney

Peter Bernhardt

For: Defendants United States of America,

Michael Leon Israel and Tammy Lynn Israel

Entered

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

10N - 4 []

GARY HOBBS	Jack C. Silver, Clerk U. S. DISTRICT COUR
Plaintiff,	D. S. District cook
vs.) No. CJ 84-4243
ERC PROPERTIES, INC., an Arkansas Corporation,	} 84-C-7 4 8-€
Defendant.	<i>)</i> }

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff Gary Hobbs and Defendant ERC Properties, Inc., hereby stipulate that this matter should be dismissed with prejudice and without costs in favor of either party, as to all claims pursuant to Rule 41(a)(1) Fed. Rules Civ. Proc.

Dated: Tulsa, Oklahoma

November , 1984

BY: <u>Ulliam C. O'Conner, Esq.</u>

Messrs Robinson, Boese, Davidson & Sublett P. O. Box 1046 Tulsa, Oklahoma 74101

Attorney for Plaintiff

Mack Muratet Braly, Esq. 1516 S. Boston, Suite 320

Tulsa, Oklahoma 74119 (918) 582-2806

Attorney for Defendant

STIPULATION OF DISMISSAL WITH PREJUDICE PAGE 1

ORDER

Pursuant to stipulation of dismissal with prejudice entered into between parties hereto;

IT IS ORDERED that this matter be dismissed with prejudice.

S/ JAMES O. ELLISON
JUDGE OF THE DISTRICT COURT

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN 4 1985

KAISER-FRANCIS OIL COMPANY, an Oklahoma Corporation,) U.S. DISTRICT COL	
Plaintiff,))	
-Vs-	No. 84-C-460-E	
STEFFEN PALKO, an individual,)	
Defendant.)	

STIPULATION OF DISMISSAL

COMES NOW the plaintiff, Kaiser-Francis Oil Company, and the defendant, Steffen Palko, by their attorneys of record, and pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, herewith file their Stipulation of Dismissal for the reason that this case has been settled to the satisfaction of both parties.

WHEREFORE, the parties request that the Court direct the Clerk of this District Court to enter upon the record that this case was dismissed with prejudice.

Respectfully submitted,

CRAWFORD, CROWE & BAINBRIDGE, P.A.

HOLLIMAN, LANGHOLZ, RUNNELS & DORWART

Byz .

B. Hayden Crawford

Mary N. Birmingham

1714 First National Building Tulsa, Oklahoma 74103

Attorneys for the Defendant, Steffen Palko By:

Keith F. Sellers

Laurie N. Lyons

Suite 700, Holarud Building Tulsa, Oklahoma 74103

Attorneys for the Plaintiff, Kaiser-Francis Oil Company APPROVED this 21 day of December, 1984. The Clerk is hereby directed to enter upon the record that this case has been dismissed with prejudice.

S/ JAMES O. ELLISON

James O. Ellison, Judge of the United States District Court

Intelled

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

Vs.

PRANK R. READY,

Defendant.

JAN -4 1565

JACK C.SH.VER.CLERK
U.S. DISTRICT COURT

CIVIL ACTION NO. 84-C-542-E

NOTICE OF DISMISSAL

COMES NOW the United States of America by

Layn R. Phillips, United States Attorney for the Northern

District of Oklahoma, Plaintiff herein, through Nancy Nesbitt

Blevins, Assistant United States Attorney, and hereby gives

notice of its dismissal, pursuant to Rule 41, Federal Rules of

Civil Procedure, of this action without prejudice.

Dated this 400 day of January, 1985.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS United States Attorney

NANCY NESBITT BLEVINS
Assistant United States Attorney
460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the \(\frac{\tau}{\tau}\) day of January, 1985, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Frank R. Ready, 6011 North Madison, Tulsa, Oklahoma 74126.

Assistant United States Attorney

- Extered

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

	FILE	
FRANCES K. SANDERS,)	
Plaintiff,	[AN - 4 100)	
vs.	Jack C. Silver, Cler	rk
MARGARET M. HECKLER,	U. S. DISTRICT COU	IRI
Secretary of Health and)	
Human Services of the)	
United States of America,		
Defendant.) CIVIL ACTION NO. 83-C-653-	Ε

ORDER

The Court hereby finds 1) that this action was pending before this Court on September 19, 1984; 2) that on December 13, 1983, this action was remanded to the Secretary for the purpose of reconstructing the administrative record, and that the administrative record is now complete and the case may be re-opened; and 3) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Plaintiff's Social Security Number is 393-36-2587.

Accordingly, it is this day of day of 1984, ORDERED that this action be and hereby is re-opened and remanded to the Secretary of Health and Human Services pursuant to Section 2 of the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

S/ JAIVIES U. ELLISUM

UNITED STATES DISTRICT JUDGE

Extered.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

EVELYN C. CARTER,	
Plaintiff,) i <u>v</u> M - 4 ໂອພ
MARGARET M. HECKLER, Secretary of Health and Human Services of the United States of America,	Jack C. Silver, Clerk U. S. DISTRICT COURT
Defendant.) CIVIL ACTION NO. 84-C-791-E
	ORDER

For good cause shown, pursuant to 42 U.S.C. §405(g),

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

GEORGE W. PASLEY,)
Plaintiff,	
vs.	No. 84-C-453-C
R. W. GOEN, et al.,	FILED IN OPEN COURT
Defendants.) 1531 - 4.1 98 5

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

Jack C. Silver, Clerk U.S. DISTRICT COURT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

IT IS SO ORDERED this th day of January, 1985.

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN -4 1985

ECONO-THERM ENERGY SYSTEMS CORPORATION,

JACK C. SILVER, CLERK U.S. DISTRICT COURT

Plaintiff,

Civil Action No. 84-C-206 C

TECHNOTHERM, INC.,

vs.

Defendant.

ORDER

Based upon the Stipulation and Settlement Agreement by and between the counsel and parties in this matter;

IT IS HEREBY ORDERED, that the above-entitled matter shall be and hereby is dismissed with prejudice and on the merits, without costs to any party. This Court shall retain jurisdiction to enter judgment pursuant to the Stipulation and Settlement Agreement in the event of a default in the payments to be made thereunder. The Stipulation and Settlement Agreement shall be considered confidential and shall be filed with the Clerk of Court in a sealed envelope, which shall not be opened except in the event of an application for entry of judgment in the event of a default in the payment to be made under the Stipulation and Settlement Agreement or upon Order of this Court for good cause shown.

BY THE COURT:

s/H. DALE COOK

DATED: Jan 3, 1985

Honorable H. Dale Cook, Chief Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN -4 1335 U.S. DISTRICT COURT RICHARD SLATER and RICHARD T. GARRISON, Plaintiffs,)) Case No. C-83-940-B vs. JOSEPH L. HULL, III, Defendant.

JOURNAL ENTRY OF JUDGMENT

NOW on this 3 day of January, 1985, Plaintiffs' Motion for Judgment, pursuant to the provisions of the June 12, 1984 Joint Application to Dismiss [hereinafter referred to as the "Stipulation"] and F.R.C.P. 60(B)(3) comes on for hearing. The Court finds that the Defendant has failed to comply with the provisions of the Stipulation; inasmuch as, the Defendant has failed to make the September 10, 1984 payment in the amount of \$2,000.00 and the October 10, 1984 payment in the amount of \$2,500.00.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiffs are hereby granted judgment against the Defendant in the specified sum of \$4,500.00 plus interest thereon from the September 10, 1984 breach of the provisions of the Stipulation to the date of this Judgment at the rate of 6% per annum, pursuant to 15 O.S. 1981, \$266, plus interest from the date of this Judgment to the date of full payment at the rate

of 15% per annum pursuant to 12 O.S. 1982, §727, together with an attorney's fee of \$1,500.00 for the prosecution of the Motion for Judgment and the collection of this Judgment, plus all costs of this action, accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon Defendant's payment of this Judgment, including attorneys fees and costs, the parties shall execute the Mutual Release annexed hereto as Exhibit "A", the execution of which was provided for in said Stipulation; whereupon, the Plaintiffs shall file a Release and Satisfaction of judgment.

Mornas Collecto Judge
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

RICHARD SLATER, and RICHARD T. GARRISON,))
Plaintiffs,)
vs.) Case No. C-83-940-B
JOSEPH L. HULL, III,)
Defendant.	,)

MUTUAL RELEASE

COME NOW the parties this _____ day of ______, 1985, and hereby stipulate, bargain and agree to the following terms of this MUTUAL RELEASE.

- 1. WHEREAS, Richard Slater and Richard T. Garrison, on behalf of themselves, their attorneys, heirs, assignees, and partners enter into this Release for the good and valuable consideration of \$12,500.00 and Defendant's dismissal of his Counterclaim;
- 2. WHEREAS, Joseph L. Hull, III, on behalf of himself, his attorneys, heirs, and assignees enters into this Release for the good and valuable consideration of Plaintiffs' dismissal of the above entitled and numbered action; and
- 3. WHEREAS, the parties on behalf of themselves and the persons described in Paragraphs 1 and 2, <u>supra</u>, desire to amicably resolve <u>ALL</u> disputes between them pertaining to any subject matter (including but not limited to those presently being litigated in the above entitled and numbered action);

4. NOW THEREFORE, on behalf of themselves and the persons described in Paragraphs 1 and 2, supra, the parties hereby:

each other;

- (A) promise that no claim shall be made and no litigation or proceeding shall be commenced by any person, described in Paragraphs 1 and 2, supra, against any person described in Paragraphs 1 and 2, supra, under any theory (in law or in equity) praying for damages or equitable relief of any kind, (whether or not related to the above entitled and numbered action); it being the intention of the parties hereto and the persons described in Paragraphs 1 and 2, supra, that upon the execution of this Mutual Release the parties and the persons described in Paragraphs 1 and 2, supra, have settled ALL differences which they had in the past, have in the present, or might have had against
- (B) release and forever discharge each other and any person described in Paragraphs 1 and 2, supra, of any and all claims, acts, damages, costs, attorneys fees, demands, causes of actions, or liabilities (in either law or equity); it being the intention of the parties hereto and the persons described in Paragraphs 1 and 2, supra, that upon the execution of this Mutual Release the parties and the persons described in Paragraphs 1 and 2, supra, have settled ALL differences which they had in the

- past, have in the present, or might have had against each other;
- (C) agree to indemnity, to bear the expense of the defense including all attorneys fees and costs, and to hold harmless any person described in Paragraphs 1 and 2, supra from any action, claim, demand, litigation, proceeding or judgment brought by any person described in Paragraphs 1 and 2, supra, against any person described in Paragraphs 1 and 2, supra, in violation of Paragraph 4(A) or Paragraph 4(B), supra;
- (D) acknowledge that the suppositions prompting the execution of this Release may be different from the facts, but the parties and any person described in Paragraphs 1 and 2, supra, further acknowledge their assumption of the risk that any supposition prompting this settlement may be different from the true situation and hereby agree that this Mutual Release shall in all respects be effective and not subject to termination or recission because of any such mistaken belief; it being the intention of the parties hereto and the persons described in Paragraphs 1 and 2, supra, that upon the execution of this Mutual Release, the parties and the persons described in Paragraphs 1 and 2, supra, have settled ALL differences which they had in the past, have in the present, or might have had against each other;

- (E) admit that they have been represented by counsel in the negotiation and preparation of this Release and each has fully read this Mutual Release, has had it fully explained by counsel, and is fully aware of the contents and legal significance of this Mutual Release.
- 5. This Release shall not be construed in favor of or against any party hereto, or any person described in Paragraphs 1 and 2, <u>supra</u>, but shall be construed as if all involved herein prepared this Release.
- 6. This Release shall inure to the benefit of, and be binding upon, each and every one of the parties hereto and the persons described in Paragraphs 1 and 2, supra, and the heirs, personal representatives, assignees, and successors in interest of each party hereto and the persons described in Paragraphs 1 and 2, supra.
- 7. If any term, provision, covenant, or condition of this Release is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Release shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 8. All parties hereto and the persons described in Paragraphs 1 and 2, supra, agree that this writing embodies their entire agreement, and that no representations, promises, inducements, or consideration of any kind have been made by anyone other than:
 - (A) the consideration recited, supra, and
 - (B) the promises made herein.

Page 4 of 6 Pages

9. The settlement documented by this Release is the compromise of	
doubtful and disputed claims and this Release is not to be construed as	
an admission of liability; each party hereto expressly denying	
liability to any other party.	
PLAINTIFFS:	
Richard Slater	
Richard T. Garrison	
On this day of, 1985, before me personally appeared Richard Slater, known to me to be the person described herein who voluntarily executed the foregoing instrument and acknowledged to me that he voluntarily executed the same on behalf of himself and his attorneys, heirs, assignees, and partners.	
Notary Public	
My Commission Expires:	
On this	
My Commission Expires:	
Page 5 of 6 Pages	

Joseph L. Hull, III , 1985, before me personally appearance to be the person described herein w

On this _______, 1985, before me personally appeared Joseph L. Hull, III, known to me to be the person described herein who voluntarily executed the foregoing instrument on behalf of himself and his attorneys, heirs and assignees.

Notary Public

My Commission Expires:

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA ROBERT BROWN and ELOISE BROWN,

Plaintiffs,

Entered W. S. O.S. RICER COURER

vs.

HOFER, INC., a Kansas corporation, and MAVERICK TRANSPORTATION, INC., an Arkansas corporation,

Defendants,

and

HOFER, INC., a Kansas corporation,

Defendant and Third Party Plaintiff,

vs.

LUFKIN INDUSTRIES, INC., and WEBB DIVISION OF MARMON INDUSTRIES, INC.,

> Third Party Defendant.

IRENE HAHN, HAROLD HAHN and SUE LYNN WATKINS,

Plaintiffs,

VS.

HOFER, INC., a Kansas corporation and MAVERICK TRANSPORTATION, INC., an Arkansas corporation,

Defendants,

and

No. 82-C-1101-B

No. 83-C-40-B

JACH C. S. DISTRICT COURTS HOFER, INC., a Kansas corporation, Defendant and Third Party Plaintiff, vs. LUFKIN INDUSTRIES, INC., and WEBB DIVISION OF MARMON INDUSTRIES, INC., Third Party Defendants. and WEBB DIVISION OF MARMON INDUSTRIES, INC., Defendant and Third Party Plaintiff, vs. EAST JORDAN IRON WORKS, Third Party Defendant.

ORDER

For good cause shown and upon joint application of all remaining parties to this action advising the Court that all parties have settled all claims, each against the other, with prejudice to refiling the same, the Court hereby enters its dismissal with prejudice in this action.

It is so ordered this 310 day of January, 19 75.

ST HOMAS R PRETT

THOMAS R. BRETT U.S. DISTRICT COURT JUDGE

Entered Prillering

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT BROWN and ELOISE BROWN, U.S. D/STR/CTC

Plaintiffs,

VS.

HOFER, INC., a Kansas corporation, and MAVERICK TRANSPORTATION, INC., an Arkansas corporation,

Defendants,

HOFER, INC., a Kansas corporation,

Defendant and Third Party Plaintiff,

vs.

and

LUFKIN INDUSTRIES, INC., and WEBB DIVISION OF MARMON INDUSTRIES, INC.,

Third Party Defendant.

IRENE HAHN, HAROLD HAHN and SUE LYNN WATKINS,

Plaintiffs,

HOFER, INC., a Kansas corporation and

MAVERICK TRANSPORTATION, INC., an Arkansas corporation,

Defendants,

and

vs.

No. 82-C-1101-B

No. 83-C-40-B

HOFER, INC., a Kansas Corporation,		
Defenda Third I Plaint:	-	
vs.	ź	
LUFKIN INDUSTRIES, INC., and WEBB DIVISION) OF MARMON INDUSTRIES, INC.,		
Third Defend	_	
and)		
WEBB DIVISION OF MARMON INDUSTR	ies, inc.,	
Defend Third : Plaint		
vs.	ý	
EAST JORDAN IRON WORKS,)	
Third Defend	-	

ORDER

For good cause shown and upon joint application of all remaining parties to this action advising the Court that all parties have settled all claims, each against the other, with prejudice to refiling the same, the Court hereby enters its dismissal with prejudice in this action.

It is so ordered this 3nd day of fanuary, 1985.

SA THOMAS R. BRETT

THOMAS R. BRETT U.S. DISTRICT COURT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

Vs.

KELLY P. NIX,

Defendant.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

CIVIL ACTION NO. 84-C-332-B

NOTICE OF DISMISSAL

COMES NOW the United States of America by

Layn R. Phillips, United States Attorney for the Northern

District of Oklahoma, Plaintiff herein, through Nancy Nesbitt

Blevins, Assistant United States Attorney, and hereby gives

notice of its dismissal, pursuant to Rule 41, Federal Rules of

Civil Procedure, of this action without prejudice.

Dated this (ta) day of January, 1985.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS United States Attorney

NANCY NESBITT BLEVINS
Assistant United States Attorney
460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the \(\frac{\tag{1}}{\tag{1}} \) day of January, 1985, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Kelly Nix, Route 2, Box 446, Claremore, Oklahoma 74017.

Mung Assistant United States Attorney

- Enleted

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

HERBERT M. MANNING, JR.,

Plaintiff,

Vs.

MARGARET M. HECKLER,
Secretary of Health and
Human Services of the
United States of America,

Defendant.

CIVIL ACTION NO. 83-C-355-C

ORDER

The Court hereby finds 1) that this action was pending before this Court on September 19, 1984; 2) that on September 19, 1983, this action was remanded to the Secretary for the purpose of reconstructing the administrative record, and that the administrative record is now complete and the case may be re-opened; and 3) that this action raises the issue of whether an individual who has had his/her entitlement to benefits under Title II, XVI, or XVIII of the Social Security Act based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.

Plaintiff's Social Security Number is 393-36-2587.

Accordingly, it is this And day of January

1984, ORDERED that this action be and hereby is re-opened and remanded to the Secretary of Health and Human Services pursuant to Section 2 of the Social Security Disability Benefits Reform Act of 1984 for review in accordance with the provisions of the Social Security Act as amended by Section 2 of the Social Security Disability Benefits Reform Act of 1984.

s/H. DALE COOK
UNITED STATES DISTRICT JUDGE

- Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHEM-QUIP, INC., an
Oklahoma corporation,

Plaintiff,

-vs
OSAGE RIVER BASIN CO-OP
MARKETING ASSOCIATION, a
Missouri corporation; and
HORACE JOHNSON,

Defendants.

JAN -3 1985

JAN -3 1985

NO. 83-C-829-E

STIPULATION OF DISMISSAL

The parties in the captioned matter, Chem-Quip, Inc., Osage River Basin Co-Op Marketing Association, and Horace Johnson, hereby stipulate that Chem-Quip, Inc.'s claims asserted in this lawsuit are dismissed without prejudice.

A. CRAIG ABRAHAMSON
Attorney for Plaintiff
Barlow & Cox
111 West Fifth, Suite 1000
Tulsa, Oklahoma 74103
(918) 582-4775

BRIAN J. RAYMENT
Attorney for Defendants
Blackstock, Joyce, Pollard,
Blackstock & Montgomery
515 South Main Mall
Tulsa, Oklahoma 74103

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMAN

JAM = 3 風り

MELVIN M. COE, Plaintiff,)	Jack C. Silver, Clerk U. S. DISTRICT COURT
vs.)))	No. 84-C-840-E
PUBLIC SERVICE CO. OF OKLA.,)	
Defendant.	Ś	•

ORDER

The Court has now before it the motion of Defendant Public Service Co. of Okla. to dismiss or in the alternative for summary judgment, and the motion of Plaintiff to remand this case to the district court in and for Tulsa County, Oklahoma.

On April 19, 1984, Plaintiff executed a form W-4 Employee's Withholding Allowance Certificate which certified under penalty of perjury that Plaintiff did not owe any federal income tax and had a right to a full refund of all taxes withheld for the previous year, and that Plaintiff did not expect to owe any federal income tax for the current year. Under the tax laws, 26 U.S.C. § 3402, an employer is not required to deduct and withhold any tax on wages if there is in effect at that time a withholding allowance certificate furnished to the employer by the employee certifying that the employee anticipates he will incur no liability in the current taxable year. 26 CRF § 31.3402(f)(2)-1(g)(1982) requires an employer to submit to the Internal Revenue Service for review all forms W-4 which claim an exemption from

Immediately upon the receipt of Plaintiff's form all taxation. Defendant ceased deducting federal income Plaintiff's salary based upon the statement in the form that he was exempt from withholding. Defendant also sent the form W-4 to the IRS pursuant to the above regulations. On or about June 13, 1984 Defendant received notification from the IRS that the form W-4 tendered by the Plaintiff should be disregarded and that Defendant should commence withholding income tax from Plaintiff's if he were a single taxpayer entitled to one withholding exemption (S-1 status). Such notification is made by the IRS when it has found that an exemption certificate contains a materially incorrect statement, or when it finds that, after a written request to an employee for verification the statements, that it lacks sufficient information to determine if The employer is then required to the certificate is correct. withhold amounts from the employee on the basis of the maximum number specified in the written notice received from the IRS. CRF § 31.3402(f)(1)-1(g)(5)(1982).

The regulations allow the employee to file a new form W-4, together with a written statement attached to the certificate explaining any circumstances which have changed since the date of the earlier written notice, or any other circumstances or reasons justifying the claims made on the new certificate. If the IRS is satisfied that the information is correct, it may issue another written notice to the employer advising it to withhold on the basis of the new certificate, and revoke its earlier written notice. The Defendant asserts, by affidavit of Neil Felber, that

no new certificate has been filed by the Plaintiff, to its knowledge, and such statement is not controverted by Plaintiff.

In his complaint, the Plaintiff seeks to enjoin the Defendant from withholding any amount from his wages pursuant to the written notice of the IRS, requests a return of all monies improperly withheld from his wages since the date of the filing of his form W-4 (April 19, 1984), and requests the Court to enter a declaratory judgment which declares that the Defendant employer must obey the requirements of federal and state law pertaining to the form W-4.

The Plaintiff objects to the removal of this action by the Defendant, and requests that this Court remand this action to the district court in and for Tulsa County, Oklahoma. In support of his motion, the Plaintiff argues that the thrust of this action is a trial of the right of property, and as such is founded on property rights over which the state courts have jurisdiction.

Defendant, in its petition for removal, avers that this action is an action which may be removed to the United States District Court for the reason that the action is founded on a claim arising under the constitution, treaties, or laws of the United States. 28 U.S.C. § 1441(b).

After a thorough review of all the pleadings submitted by the parties, it is clear to this Court that Plaintiff's complaint, although styled an action in regard to right of property, is essentially an action seeking to enjoin the collection of taxes.

Plaintiff argues that his request would not enjoin the collection of taxes, because the taxes are not due and payable until the end of the year, the IRS has no legal right to withhold monies from his wages pending the date the taxes are due and payable, and that he is not included in the definition of "employee" for purposes of income tax withholding under 26 U.S.C. § 3401(c).

Section 3401(c) is intended to enlarge the common law definition of employee to include officers, employees, or elected officials of the United States, states or political subdivisions or the District of Columbia and officers of corporations. Courts look to the common law definitions of employee and independent contractor in order to determine whether or not a taxpayer will be subject to withholding under this section, or will be subject to the payment of taxes pursuant to their status as an independent contractor. See Lanigan Storage and Van Co. v. United States, 389 F.2d 337 (6th Cir. 1968); Avis Rent-A-Car System, Inc. v. United States, 364 F.Supp. 605 (D.C. N.Y. In either event, the taxpayer is not exempt from 1973). payment. The only question is which statute covers the method of payment for that particular taxpayer. Nothing in the law, statutory or otherwise, suggests that § 3401(c) was meant to exclude all common law employees from income tax withholding, and such an argument is clearly without merit.

The recission of Plaintiff's social security number does nothing to alter this result. Congress is authorized to levy

taxes upon income from whatever sources derived. The meaning of "income" is that meaning given to it in common speech. U.S. v. Safety Car Heating and Lighting Co., 56 S.Ct. 353 (1936). Income may be defined as "gain derived from capital, from labor, or from both combined ..." Bowers v. Kerbaugh-Empire Co., 46 S.Ct. 449, 451 (1926). The Plaintiff, as a wage-earning employee, is subject to taxation upon his "gain derived from labor" - his wages - in the same manner as any other wage-earner, without regard to his actions as to his social security number. In addition, Plaintiff is not being taxed "... for the mere privilege of existing ...", Redfield v. Fisher, 292 P. 813, 819 (Oregon 1930), but is being taxed upon income received from labor.

The withholding of income tax at the source is not the product of the imagination of the IRS, but is mandated by law under § 3402(a) of Title 26. Plaintiff argues that, under § 3402 subsection n, his employer cannot deduct and withhold any taxes upon his wages if the proper form W-4 is in effect. Plaintiff also contends that the IRS written notice is not proper authorization for the employer to disregard his form W-4. A close inspection of subsection n, however, reveals that it requires that the withholding exemption certificate be submitted in such form and contain such information as the Secretary may prescribe. Subsection n also provides that the Secretary shall, by regulations, provide for the coordination of its provisions with the provisions of subsection f. Subsection f sets forth the

withholding exemptions that a taxpayer is allowed. It requires an employee to furnish an employer a signed withholding exemption certificate relating to the number of withholding exemptions he claimed on or before the date of the commencement of his The number of withholding exemptions claims on the exemption certificate "shall in no event exceed the number to which he is entitled". 26 U.S.C. § 3402(f)(2)(A). It is clear that the law not only authorizes, but orders the executive agency to coordinate the requirement that a withholding exemption certificate be filed claiming exemptions which do not exceed the number to which an employee is entitled, with the provision allowing for the filing of a certificate which states that an employer is exempt from income tax withholding. Pursuant to this mandate, the IRS set forth the regulations discussed above which require employers to submit to the Internal Revenue Service all exemption certificates which claim that the employee is totally exempt from withholding.

Title 26 U.S.C. § 7421 specifically states that no lawsuit for the purpose of restraining the collection of taxes shall be maintained. The suit before this Court is clearly one for the purpose of restraining the collection of taxes. As such, it is properly considered by the United States District Court for the Northern District of Oklahoma, and is not subject to remand to the state district court. As such, it is also precluded by § 7421, and must be dismissed for lack of subject matter jurisdiction in this Court.

There is no basis for recovery from the Defendant employer for money withheld from the wages of the Plaintiff. The employer was acting in accordance with the duties imposed upon it by federal law, and properly withheld wages under the S-1 status. See 26 CRF \S 31.3402(f)(2)-1(g)(5).

The Plaintiff has also alleged that the withholding of taxes from his wages is a deprivation of property without due process of law. However, it is well settled in this circuit that federal income tax withholding does not result in the taking of property without due process of law. United States v. Smith, 484 F.2d 8 (10th Cir. 1973), cert denied, 94 S.Ct. 1566 (1974); Campbell v. Amax Coal Co., 610 F.2d 701 (10th Cir. 1979); Robinson v. A & M Electric, Inc., 713 F.2d 608 (10th Cir. 1983). The due process clause is not a limitation upon the taxing power conferred upon Congress by the constitution. The due process clause could only conceivably come into play "if the act complained of was so arbitrary as to compel the conclusion that it was not really taxation but the confiscation of property." United States v. Smith, supra at page 11. Withholding provisions of the present statutes are a legitimate exercise of Congress' power to make all laws "necessary and proper" for the taxing of income.

In addition, courts have held that there is no violation of due process where the IRS has informed the taxpayer of a procedure by which he can appeal or correct their determination. See Smith v. Heller, 80-1 USTC paragraph 9458 (D.

Oregon 1979); Salisbury v. Heller, 45 AFTR.2d 80-599 (D. Oregon 1979).

The question of the applicability of the due process clause is so well settled in the law, that the Tenth Circuit Court of Appeals has indicated that when requests for attorney fees are made, a serious question is raised under the exception to the general rule covering attorney fees which permits the assessment of fees when a party acts in bad faith, vexatiously, wantonly or for oppressive reasons. McCarty, supra at page 609. Under such clearly settled law, this Court must rule that Plaintiff's allegations against the Defendant in regard to deprivation of property without due process must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted.

The Court notes at this time that during these proceedings, the Plaintiff has discussed a civil penalty levied upon him by the Internal Revenue Service for a previous unpaid assessment. In his complaint, however, he seeks only to enjoin his employer from withholding taxes from his current wages. Whether or not Plaintiff has been actually afforded due process by the Internal Revenue Service in regard to his tax levy, or in regard to their action in response to the filing of the most recent Form W-4, is not the subject of this lawsuit, because Plaintiff has not sued the IRS. As against his employer, Public Service Company, his due process claims must clearly fail.

The Court finds that, contrary to the allegations of the

Plaintiff, this suit is in reality a suit to restrain or interfere with the collection of taxes, and therefore specifically prohibited by Title 26 U.S.C. § 7421. The United States District Court for the District of Nevada in Stefanelli v. Silvestri, 524 F.Supp. 1317 (1981) dismissed with prejudice a plaintiff's claim for injunctive relief. The court stated:

The defendants argue that, although the suit is styled as one seeking relief against the defendants in their capacity of an employer of the plaintiff, in reality this is an action to enjoin the government from collecting taxes. I agree with the defendants. To grant the plaintiff's requested injunctive relief would clearly amount to judicial interference with the expeditious collection of taxes and as such would clearly be contrary to § 7421(a).

(citations omitted).

Exceptions to the anti-injunction rule are made only under circumstances where the taxpayer can demonstrate (1) that under no circumstances can a government defendant prevail; and (2) that the taxpayer will be irreparably harmed if the injunction is not granted. Plaintiff has failed to allege any harm which may not be redressed through the payment to him by the IRS of taxes allegedly wrongfully withheld. Plaintiff fails to meet the standard of Commissioner of Internal Revenue v. Schiparo, 96 S.Ct. 1062 (1976). In addition, Plaintiff has failed to show that under no circumstances would the government defendant prevail. Considering the facts of this case it would be highly unlikely that a plaintiff who has submitted a false form W-4 would prevail in an action against the Internal Revenue Service for a return of withheld wages.

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of Plaintiff to remand be and the same is hereby denied.

IT IS FURTHER ORDERED that the motion of Defendant to dismiss or in the alternative for summary judgment be and the same is hereby granted, in that Plaintiff's action must be dismissed for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted.

ORDERED this End day of January, 1985.

JAMES OF ELLISON

UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAN -2 1385

PATRICK MALLOY III,
as Trustee in Bankruptcy
for NELLIE MAE SEIGLE,

Plaintiff,

V.

No. 84-C-747-B

UNITED STATES FIDELITY &
GUARANTY COMPANY, a
Maryland corporation, and
JAMES J. RUSSELL,

ORDER

Defendants.

This matter comes before the Court on plaintiff's motion to remand for lack of diversity jurisdiction and defendant James J. Russell's motion to dismiss. Defendants have objected to the motion to remand and plaintiff has objected to the motion to dismiss. For the reasons set forth below, the motion to remand for lack of diversity jurisdiction is overruled; the motion to dismiss is sustained.

This is a suit for actual and punitive damages for alleged bad faith breach of an automobile liability insurance contract. The suit was filed in the District Court of Creek County on August 7, 1984, and removed to federal court August 29, 1984. Plaintiff filed a motion to remand for lack of diversity jurisdiction. Defendant Russell filed a motion to dismiss, claiming he was fraudulently joined to defeat diversity jurisdiction and that plaintiff has no cause of action against him, individually.

Plaintiff is an Oklahoma citizen. United States Fidelity & Guaranty Company ("USF&G") is a Maryland corporation and Russell, who was claims manager for USF&G at the time the cause of action Plaintiff alleges in his arose, is an Oklahoma citizen. complaint that the defendants acted in bad faith in defending a personal injury lawsuit brought by a David Allen Miles after a vehicle collision in Sapulpa, Oklahoma, on August 25, 1973. Plaintiff contends that after the accident, Nellie Mae Seigle made admissions of liability, but that USF&G, the insurer, denied she was liable and refused to settle within the limits of the policy, which were \$10,000 for bodily injury. The case went to trial, and on October 30, 1980, in the Bristow Division of the District Court of Creek County, Oklahoma, a verdict was rendered in favor of David Miles for \$81,383.82 and his wife, Lu Ann Miles, for \$26,171.12.

Subsequently, in November 1983, Nellie Mae Seigle was forced to file for bankruptcy. Plaintiff contends the defendants acted in bad faith in handling the personal injury lawsuit in the following respects:

- (a) failing to tell Seigle about offers to settle within policy limits;
- (b) failing to settle claims within policy limits when they had an opportunity to do so;
- (c) telling Seigle to tell them (defendants) not to settle the claims against her;

- (d) failing to recognize and observe the conflict of interests between the insured and the insurer;
- (e) failing to see to it that Nellie Mae Seigle had independent legal counsel properly advise her of her rights in the matter, and instead wrongfully permitting her to give testimony contrary to her original statement;
- (f) advising Seigle to take bankruptcy after the judgment was rendered against her in the personal injury accident.

Both the motion to remand and the motion to dismiss center on the issue of whether James J. Russell, the claims manager for this area at the time of the personal injury lawsuit, is a proper party defendant. The defendants contend Russell was sued only to defeat diversity jurisdiction and ensure the case would stay in state court. They contend plaintiff's cause of action, if any, is against the insurer and not its employee. Plaintiff contends Russell is personally liable for alleged acts of bad faith by him.

Upon allegations of fraudulent joinder designed to prevent removal, the court may look beyond the pleadings to determine if the joinder, although fair on its face, is a sham or fraudulent device to prevent removal. Smoot v. Chicago, Rock Island & Pacific Railroad Co., 387 F.2d 879, 881-882 (10th Cir. 1967). If the joinder of an employee serves only to frustrate federal jurisdiction, the case should be dismissed as to that defendant and should not be remanded to state court. Id. at 882.

Under Oklahoma law, an employee such as Russell is not liable to third persons for his nonperformance of a duty of his employment, but only for acts of positive wrong and negligence. Scott v. Huffman, 237 F.2d 396, 398 (10th Cir. 1956); Killebrew v. Atchison, Topeka & Santa Fe Ry. Co., 233 F.Supp. 250 (W.D.Okla. 1964). Thus, in order to establish liability on the part of an employee, "it is necessary for the plaintiff to have alleged a failure on the part of the defendant to perform a duty which he owed to the plaintiff, notwithstanding said defendant's employment." Killebrew v. Atchison, Topeka & Santa Fe Ry. Co., supra, 233 F.Supp. at 250-251. Otherwise, the duty that is owed the plaintiff, if any, is a duty of the employer, and it cannot be imposed upon the employee; the negligence or tortious action of the employee is, at most, nonfeasance to the employer. Id. at 251.

The Court has reviewed evidence submitted by the parties concerning the involvement of defendant Russell in the personal injury action. The evidence, viewed in the light most favorable to plaintiff, indicates Russell may have had conversations with Maurice Lampton, the attorney who represented USF&G and Seigle in the lawsuit. There is also some evidence that Russell may have ordered private investigations of David Allen Miles and Miles' attorney, Jack Sellers. However, this evidence does nothing to support plaintiff's claim that Russell is independently liable to plaintiff for alleged bad faith handling of the lawsuit. The evidence tends to show Russell was acting within the scope of his

employment as claims manager for USF&G and the duties he breached, if any, were duties of employment owed to USF&G, his employer. Further, it appears to the Court that the alleged breaches of obligation to plaintiff, if any, were obligations owed by USF&G to plaintiff.

ENTERED this 3 day of ______, 1984.

THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE